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ABSTRACT

This report reviews school department data and interviews with officials and others involved in the Norfolk (Virginia) school resegregation plan designed to stem White flight and increase parental involvement. The report finds that all the basic assumptions the local community and the court had about the potential benefits of undoing the city's busing plan have turned out to be incorrect. It also shows that the assumptions, predictions, and research used by the court in making its decisions in the Norfolk case were seriously flawed, shortsighted, and incomplete. The increased academic success of Black students that was expected did not materialize; in fact, the gap between segregated target and better-integrated nontarget elementary schools has grown wider, indicating a persistent trend of inequality. The plan has also initiated a sharp increase of concentrated poverty and racial isolation in the city schools, both characteristics long correlated with low academic achievement. It is stated that these findings should serve as a warning to educators and politicians who are beginning to support the idea of segregated neighborhood schools as a solution to academic and other school-related problems. (GLR)

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RESEGREGATION IN NORFOLK, VIRGINIA

Does Restoring Neighborhood Schools Work?

by

Christina Meldrum
Susan E. Eaton

with a foreword by Gary Orfield

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Gary Orfield
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RESEGREGATION IN NORFOLK, VIRGINIA
Does Restoring Neighborhood Schools Work?

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FOREWORD

Eight years ago, the Norfolk, Virginia school desegregation case brought the first big victory to the Reagan Administration's campaign to dismantle desegregation plans and restore neighborhood schools. The federal court decision allowing Norfolk to knowingly recreate 10 nearly all-black elementary schools was hailed as a triumph of common sense in which courts were finally willing to abandon useless and counterproductive desegregation remedies. Indeed, at the peak of the conservative movement in the middle of the Reagan era, it seemed "everyone knew" that school desegregation had failed, that white families fled from the public schools when desegregation was mandated and that minority kids would be much better off back in their own schools if parental involvement and community support could increase.

As critics of school desegregation argued that desegregation plans were counterproductive, courts were asked to make judgments about such complex questions as how the desegregation plans might be linked to "white flight" and low parental involvement in the schools. Federal judges hearing desegregation cases were charged with making sweeping conclusions both about historic violations and present-day remedies needed to repair the harm caused by a history of discrimination. By the late 1970s and early 1980s there were widespread attacks on desegregation orders on the grounds that the well-intentioned plans had caused significant harm.

When faced with these difficult cases, some courts struggled with the complicated evidence and the divided expert opinions on the issues. But others simply adopted the arguments of one side or the other or wrote into the law the personal world view of the judge. The inherent risk in these cases is that when a court reaches a conclusion based upon what seems to be "common sense," and uses it as a basis for limiting the desegregation rights of minority students, the "common sense" assumptions may very well turn out to be wrong. The result is that desegregation remedies may have been limited, constrained or, as in Norfolk's elementary schools, completely dismantled.

The Reagan Administration used the Norfolk case to open a successful campaign to dismantle desegregation plans across the nation. On December 5, 1984 the U.S. Justice Department filed a brief in a federal court in support of Norfolk's attempt to resegregate its elementary schools. In the brief, the Justice Department argued for the first time that it was constitutionally permissible for local school boards to dissolve desegregation plans and return to segregated neighborhood schools. In its brief, the Justice Department said that school systems that had been declared "unitary" – or free from the vestiges of segregation – had the right to take actions that might increase segregation. So long as the school district in question was creating segregation for a valid public purpose and not with discriminatory intent, the brief said, desegregation plans could be dismantled. In addressing the Norfolk case, the Justice Department said that by dismantling desegregation city educators were, in fact, pursuing two valid public purposes: increasing parental involvement and halting or reversing a trend of white flight. The U.S. Assistant Attorney General at the time, William Bradford Reynolds, said in 1984 that the new Justice Department policy would

"restore to local authorities full responsibility for running their public schools." He said that the new policy could affect "many, many other schools districts around the country" who wanted to get rid of their desegregation plans.

In Norfolk, the Justice Department position ultimately prevailed in the Court of Appeals. The Supreme Court in 1986 refused to review the case, leading to the first court-approved reassignment of students to resegregated, nearly all-black schools. Four years later, in 1990, under the *Dowell v. Board of Education of Oklahoma City* case, the Supreme Court would apply the doctrine permitting resegregation to the country at large. Soon after, schools districts across the U.S. began considering the possibility of asking a court to let them resegregate, often in pursuit of the same goals expressed in the Norfolk case.

Today, the world of litigation is curiously closed. Once a court decision is made, the findings of "fact" that were incorporated into a court decision tend to be accepted as lasting truth, whether they prove true in later years or not. No one checks years later to see whether or not the community and school district goals that the courts saw as valid justifications for limiting desegregation were actually achieved. The attorneys on both sides move on to other cases and judges return to their normal dockets. The Supreme Court, meanwhile, has given local federal district courts vast discretion to reach decisions about the facts of local desegregation issues, decisions which must be accepted by the higher courts unless the facts are "clearly erroneous." This is a system that makes a good deal of sense when judging the credibility of witnesses through cross examination in court. But in the case of Norfolk, and others similar to it, the task is the more complex one of grasping the dynamics of urban social development. If a court decision is based upon the personal experience and world view of the judge, it is likely a court will make findings that match the opinions of local community leaders, but which, when held up to reality, turn out to be incorrect. Clearly, when a court ends a right, such as the right to integrated education on the basis of "facts" that turn out to be incorrect, then the minority students who are relegated to resegregated schools suffer a serious and needless loss.

The legal system allows no way to compare court assumptions or accepted "facts" about the benefits of resegregation to what actually happens after a school district, such as Norfolk's, resegregates. This leaves an open area for scholarly research and press investigations. In many cases, the press might be the most logical party to investigate the ramifications of court decisions that affect schools. However, many newspapers give the education beat a low priority. Often, school systems are covered by the youngest, most inexperienced reporters who have training in neither law nor research and have little time to conduct in-depth investigations. Reporters are forced to rely on information provided by the school administration, which has an obvious stake in being presented in a positive public light. In many cases, newspaper editorial boards also lack sufficient information to make an informed statement or have ideological commitments that cause them to act as if the reasons for ending desegregation are unquestionably correct.

Equally dismaying is that a great deal of the data presented to the courts in "resegregation" cases has been designed not for a test in the academic world, but by

well-paid research consultants for partisan use in court. Since school systems often have a lot of money to invest in commissioning such research and the civil rights organizations who are plaintiffs usually have none, "evidence" in court can easily be skewed. There has been very little money for academic research in this area – virtually none has been provided by the federal government since 1980 – and it has not been a fashionable research topic in the disciplines. We have been in a period in which we have begun to boldly dismantle school desegregation with very little real information about whether the assumptions that drive the policy are valid. School systems are embarking on untested alternatives to desegregation as if they know the alternatives will work.

This study is a sorely needed look at a "resegregation" case in which the goals were clearly set out, where the court adopted a set of arguments about the nature of the community and the positive impact of neighborhood schools. It is now possible to examine the record of resegregation over the period of nearly a decade. This examination of the actual outcomes of the first court sanctioned school "resegregation," should be of great interest to the courts and community leaders in many other cities who are debating the same issues.

In this study, Christina Meldrum and Susan Eaton present very serious evidence that the basic factual conclusions on which the court acted were wrong. The court, both in concluding what had happened during desegregation and in predicting what would happen after the dissolution of desegregation, proved to be in error.

The findings in this Harvard Project on School Desegregation report challenge the basic assumptions that underlie policies that allow schools to dismantle desegregation. In Norfolk, it appears that the white flight in the district had stabilized under the city's busing plan and that in recent years, under the neighborhood school plan, the proportion of whites to blacks has declined at the elementary level. School desegregation, then, does not necessarily produce white flight and the white flight related to desegregation may end or even reverse without resegregation. Neighborhood schools may not end white flight or even slow it. In fact, many schools districts experience rapid white loss for other reasons. Segregated schools may rapidly become "inherently unequal" again and patterns of low achievement may not be reversed or may even worsen in spite of extra money. As for parental involvement, it may be that the poverty of the parents rather than the distance from neighborhood schools is the most powerful reason for low parental involvement. Norfolk shows us that neighborhood schools may not solve the problem of low parent participation.

Educators and judges should be far more careful in evaluating the claim that there is a good substitute for integrated schools or that desegregation cannot be maintained successfully. The Supreme Court, 40 years ago in *Brown v. Board of Education*, was correct in declaring segregated schools "inherently unequal." Therefore, if there are feasible ways to create and maintain desegregated schools, we should pursue those and use great caution in dismantling desegregation, regardless of whether or not the courts would permit the change. In seeking the best of all possible worlds – freedom from the court and a return to the seeming attractiveness of "natural" neighborhood schools – we are at real risk of ending up with the very worst -

segregation, inequality and no legal leverage to address the problem.

Gary Orfield
May, 1994

EXECUTIVE SUMMARY

It has been eight years since Norfolk, Virginia became the first school district in the nation given federal court sanction to dismantle its desegregation plan and return to racially segregated elementary schools. Since the school district's widely publicized and highly controversial return to segregated schooling in 1986, little national attention has focused on the effects of the neighborhood school plan.

The Harvard Project on School Desegregation report, *Resegregation in Norfolk, Virginia: Does Restoring Neighborhood Schools Work?*, finds that all the basic assumptions the local community and the court had about the potential benefits of undoing the city's busing plan have turned out to be incorrect. The evidence in this report shows that the assumptions, predictions, and research used by the court in making its decision in the Norfolk case were seriously flawed, shortsighted, and incomplete.

Norfolk's return to segregated neighborhood elementary schools has been neither the panacea for white flight nor the cure for low parental involvement the court had expected. From an educational standpoint, the plan that was designed to improve opportunities for black students who would attend these newly "resegregated" schools has failed to boost academic achievement. In fact, the achievement gap between segregated target and better integrated non-target elementary schools has grown wider in recent years, indicating a persistent trend of inequality. The most unfortunate result of Norfolk's return to neighborhood schools is the sharp increase of concentrated poverty and racial isolation in the city schools, both characteristics long correlated with low academic achievement.

Educators who believe students might be better served by an outright end to desegregation and a return to neighborhood elementary schools should consider seriously the lessons from Norfolk, which teach us just the opposite. These findings inform the debate about desegregation policy at a time when arguments in support of segregated neighborhood schools are winning favor among some politicians and going more or less unquestioned by the media.

To complete this report, authors reviewed school department data, interviewed and visited officials and others involved with the case. In keeping with the Project on School Desegregation's policy, officials in the Norfolk Public Schools were provided a preliminary draft of this report nearly two months prior to release and were invited to make comments or corrections. Officials failed to respond to the findings.

Background and History

The complex, interrelated historical and legal issues involved in the Norfolk case stretch back four decades. This summary seeks to put contemporary events into an historical context so this report and its findings can be fully understood.

Like most southern states and cities, Norfolk, Virginia has a history of intentional racial segregation. For example, in 1958, after a court ordered the integration of

Norfolk's white schools, Virginia Governor Lindsay Almond Jr. chose to close the schools rather than desegregate them. This actions was overturned and small-scale desegregation began. Civil rights lawyers continued to challenge remaining racial segregation in Norfolk, but it wasn't until 1972 that the court approved and put in place a comprehensive desegregation plan.

Three years later, Norfolk's schools were granted "unitary status" by the federal district court, with an order whose significance school officials likely did not understand at the time. This status meant that in the eyes of the court, Norfolk had achieved a "unitary" - or desegregated - school system. ("Unitary" might be best understood as "single" in contrast to "dual," which implies that a district maintains two types of schools– "black" and "white".) This unitary status order would make it easier in later years for the city to win permission to return to segregated schooling.

In 1983, the city school board voted 5 to 2 to begin efforts to stop busing elementary school students. Parents of black schoolchildren immediately challenged this move and filed a lawsuit, *Riddick v. School Board of the City of Norfolk*. The school board's new assignment plan was approved, however, by the federal district court and subsequently, in 1985, by the Court of Appeals.

In making its decision, the court accepted the school board's explanation that an end to school busing would attract white families back to city schools, increase parental involvement, and ameliorate a trend of white flight so severe that the school system would otherwise come to enroll an increasing number of blacks and a dwindling pool of whites, making racial integration impossible to achieve. This predicted "resegregation" was a justification to "resegregate" immediately, in the hopes of retaining white students and even attracting back the ones who had allegedly fled because of the desegregation policy.

The following year, the Supreme Court refused to hear the plaintiffs' appeal, allowing the controversial ruling to stand.

In the fall of 1986, Norfolk ended its busing plan for elementary school students. This action created 10 nearly all-black elementary schools, later to be designated as "target" schools. Under the new neighborhood school plan, three other schools became more than 70 percent white.

It is crucial to explain the role that the 1975 "unitary status" declaration played in this decision. This status led the court in the *Riddick* case to apply a lenient legal standard to the school board. Had the school district not been granted unitary status, it would likely have had to prove that its actions would not impede desegregation efforts. But Norfolk's discriminatory history was essentially erased by the unitary status ruling. As a result, the school board needed only to prove that its proposed return to segregated schools was "rationally related" to "legitimate" government interests, with the interests in this case being an end to white flight and an increase in parental involvement.

Evidence to date, however, demonstrates that the plan has done neither.

FINDINGS

Findings are summarized below and explained more fully in the body of the report.

White Flight and White Return

The courts' conclusions about busing and white flight mirror those offered by Dr. David Armor, the social scientist hired by the school board to write a report to the court about the effects of "white flight." But research conducted since the court decision, along with current demographic trends, indicate that Armor's predictions about white flight and white return, upon which the court relied, were inaccurate. Far fewer white elementary school students have returned than was predicted. The most recent data indicate that the proportion of whites to blacks to blacks in elementary schools is declining.

The proportion of whites in the system had actually stabilized during the busing plan's final years, from 1982-1986. This fact was acknowledged but not analyzed seriously by the court.

The small jump in the proportion of whites that occurred immediately after the start of the neighborhood school plan was promoted by the school system as evidence of success. Less publicized is the decline in proportion of white students at the elementary level since that early increase.

In addition, this report shows that even the most heavily black schools showed actual *gains* in the number of white students at their schools during busing, and that the proportion of black loss at these heavily black schools was higher, overall, than the proportion of white loss. This finding is in direct contradiction to popular belief.

Lastly, there was never any conclusive evidence presented to the court that showed that white flight was caused solely or principally by the city's busing plan. It is true that busing may have produced some white flight, but in examining the available evidence, this report argues that other factors need to be considered, namely crime, housing patterns, a pre-busing pattern of white suburbanization, and logistical problems associated with school transportation.

Parental Involvement

Current trends in the city schools demonstrate that, contrary to the court-accepted school board argument, an end to mandatory busing does not necessarily trigger an increase in parental involvement. In *Riddick*, the court had been willing to accept the school board contention that ending busing was rationally related to the legitimate interest of increasing parental involvement. However, similar to the white flight issue, there was never any conclusive evidence presented to the court that would have shown that busing caused a decline in parental involvement in the city schools.

Since busing ended in 1986, parental involvement in the segregated black schools has declined. During busing, in 1985, the schools had 1,934 PTA members.

In 1992, the number dropped to 1,374, a decline of 29 percent. It should be noted that this decrease is not a result of lower enrollment at target schools; the enrollment in these schools *increased* by more than 100 students from 1985 to 1992.

In press reports, school officials have consistently dismissed this phenomenon, saying that these numbers are misleading. Their argument is that poor parents were always the ones least likely to get involved in schools and the end of busing has simply concentrated those parents in certain schools, leading to an overall decrease in involvement. School leaders, in fact, are absolutely correct. Their thesis confirms the arguments presented in the Harvard Project on School Desegregation report. Clearly, if one accepts the idea that parental involvement is a positive thing, an end to busing had a negative effect on the all-black target schools, and resulted in a decline in parental involvement. It is obvious that the policy of putting a school closer to a students' home is simply not a cure for low parent participation.

In the Face of Loss: A Compromise Plan

After the end of busing, the school board approved an educational improvement plan whose stated purpose was to improve education for black children relegated to newly resegregated schools. But the extra money, smaller classes, and better educated teachers required by the plan have not made the segregated schools equal to the better integrated elementary schools.

After eight years of the improvement plan, on every available measure, students in segregated target schools still score far worse on standardized tests than their counterparts in other schools. Of course, children from disadvantaged backgrounds score low on standardized tests for a variety of complicated reasons, not all of which can be traced to school policies. More significant is that, based on the most consistent measure available, the achievement gaps between students in segregated target schools and regular schools have grown wider since the end of busing. Test scores have declined steadily in "target" schools, while in non-target schools, the scores are stable.

Target-school students, for example, fail the state's mandated literacy test with much more frequency than students in non-target schools. Less than half the sixth graders from the district's segregated target schools passed the state's basic reading test in 1993, while 76 percent of students from non-target schools passed the mandated exam. In addition, 66 percent of fourth-graders in segregated target schools were identified by the state as in need of remedial help in reading in 1993. In the non-target schools, only 34 percent of students needed remedial help. This is not to suggest that students in targent schools would have necessarily acheived at higher rates if they had been in integrated schools. Rather, these trends show that if the schools had been integrated, the target school students would have been in educational environments where there is a much higher level of academic competition and achievement.

CONCLUSION

The court erred in granting Norfolk, Virginia permission to end busing for racial integration. The predictions and assumptions upon which the court made its decision have proved incorrect. The high levels of racial segregation in Norfolk's elementary schools, contrary to the court's assumptions, would not have occurred had the population trends during busing continued. Efforts to improve the educational quality of segregated black schools have produced no evidence whatsoever that the extra monetary provisions have helped students at all. Achievement rates are abysmal in these schools, and failure rates are high.

School officials, policy makers, civil rights lawyers and courts should take the lessons from Norfolk and continue to pursue and implement policies designed to improve education *within* a racially integrated school setting. The Norfolk case shows that dismantling desegregation and returning to segregated schools did not bring white people back to urban areas, did not increase parental involvement in education among the poor, and did not provide an equal educational opportunity.

INTRODUCTION

In 1986, under *Riddick v. School Board of the City of Norfolk*, Norfolk, Virginia became the first school district in the nation to win federal court permission to end a busing plan that had racially integrated the city's elementary schools. The District Court for the Eastern Division of Virginia granted this permission despite school officials' acknowledgement that abandonment of busing would create ten nearly all-black elementary schools. The Fourth Circuit Court of Appeals upheld this ruling, even though the 1954 precedent of *Brown v. Board of Education* had outlawed intentionally segregated schools, describing them as "inherently unequal."[1] In 1986, the U.S. Supreme Court subsequently refused to hear this case, letting the ruling stand. In the Fall of 1986, Norfolk "resegregated" its elementary schools, becoming the first school district to take such a step with court sanction.

Two reasons help to explain why the federal court granted the school district permission to intentionally segregate its schools. First, in 1975, the same court had declared that Norfolk had eliminated all vestiges of racial segregation in its school system. This granted Norfolk "unitary status," a legal label that had no established meaning at the time, but which implied that a school system was successfully desegregated. After this order was issued, the Norfolk school district continued to bus students, perhaps because school officials assumed that unitary status did not free them from the requirement to maintain racially desegregated schools. However, under the new *Riddick* case in 1984, District Court Judge John MacKenzie determined that once a school district obtains unitary status, the school district need not maintain its desegregated schools. The judge reasoned that if a "unitary" school district does not *intentionally* segregate on the basis of race or otherwise discriminate against minority students because of their race, then the school district is legally free to dismantle its desegregation plan.[2]

Second, the court in the *Riddick* case employed a legal test that favored the school board. The court chose not to employ the legal test that would require a school system such as Norfolk's, that had a history of intentional segregation, to prove that actions that alter a desegregation plan are not discriminatory, and that they would not impede creation of a desegregated school system. Rather, the legal test used by the court placed the burden of proof on the civil rights lawyers to prove intentional discrimination on the part of the school board. This means that the court presumed the actions of the school district to be non-discriminatory even though it was clear the actions would produce racial segregation.

Even if the civil rights lawyers could prove that the actions would obviously

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[1]Brown v. Board of Education, 347 U.S. 483, 74 S Ct 686 (1954).

[2]Riddick v. School Board of the City of Norfolk, 784 F.2d 521 (4th Cir. 1986).

increase segregation, the court said the school board need only prove those actions were "rationally related" to a "legitimate government interest" in order to win. The rational relation test favored the school board because courts are traditionally accepting of government-espoused interests.[3]

In the Norfolk case, the lawyers for the school board offered two such interests for ending busing: curbing or halting "white flight," and the need to increase parental involvement. The school district had attributed these problems to busing, arguing that if busing were to end, the degree of white flight would lessen and parental involvement would increase. The court agreed that these were rational reasons for ending busing. To reach this decision, the court relied on school district data, including a commissioned report about white flight, enrollment rates, parental involvement rates, projections for participation in a proposed majority to minority transfer program, and student achievement as measured by test scores.

The court rejected the arguments of civil rights lawyers who said the data was flawed. Despite the virtual lack of any sound evidence that would prove that white flight caused declining parental involvement, or that busing alone caused either problem, the court claimed that an end to busing was rationally related to curbing white flight and increasing parental involvement. The court concluded that ending busing would curb white flight and even lure white families back to the public schools.

The evidence and analysis presented in this report suggest that the court reached the wrong conclusion. There are two reasons for questioning the wisdom of the court decision. First, predictions and conclusions about future and past demographics were faulty. Prior to the school district's elimination of busing, the white population had, in fact, begun to stabilize. After this brief rise, the white population began to decline again under the neighborhood school plan, and actual rates of white return are much lower than those predicted in the school district report used by the court. Second, there has not been substantial increase in parental involvement. In fact, in many of the schools, parental involvement has declined.

Although busing may have contributed to white flight and declining parental involvement, other factors, including a long-time pattern of white migration to the suburbs, relatively high crime rates, and the city's disproportionate share of low-income housing also contributed. In retrospect, the basis of the so-called rational reasons for restoring segregation are questionable. Lastly, the results of an educational plan adopted by school leaders strongly indicates that Norfolk's abandonment of desegregation is not only flawed in a legal sense. It also fails to demonstrate any educational equity for the plaintiffs. Student achievement in the segregated schools lags behind that of students in the other elementary schools, and the gap is widening.

Given the magnitude of a decision to return to segregated schools, this paper argues that the deferential rational relation test is inappropriate in decisions that might

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[3]Norwood, G. *Resegregation of Public Schools*. 16 SOUTHERN ILLINOIS UNIVERSITY LAW JOURNAL 481 (1992): 484.

end busing or otherwise resegregate schools. Rather, courts should take one of two alternate paths. First, they could consider the action of knowingly segregating schools equal to an intent to segregate, which is illegal under *Brown v. Board of Education*.[4] In the case of Norfolk, in fact, the locations of today's all-black and nearly all-black schools were first established by housing and school officials to serve black children in the days of legal segregation. A return to those same neighborhood school assignments is, in effect, a return to the segregated schooling arrangements that existed before the court forced the Norfolk school district to stop segregating students by race. Many of the children live where they do precisely because of the official policies of housing agencies that promoted racial separation.

Second, courts could apply the strict scrutiny standard when school districts decide to alter desegregation plans in such a way that will produce segregated schools. The strict scrutiny test requires government to prove a stronger, compelling interest, and requires defendants to prove that the action in question – in Norfolk's case, ending busing – is necessary to reach that goal. Courts normally apply strict scrutiny in the equal protection context anyway when the government is differentially treating a racial minority or impinging on a fundamental right, such as equal protection of the laws in public education. Courts do not usually view acts that have a disparate *impact* on racial minorities to be as suspect as differential *treatment* of a racial minority.[5] But courts should take such a view in school resegregation cases.

There are two justifications for this. First, school districts that had been under a desegregation order *do* have a history of intentional discrimination, and a ruling of unitary status should not be allowed to erase that relevant history. Any action by such a school district that negatively affects minorities should be suspect. Allowing a school to resegregate because it has briefly achieved a desegregated system and the court has labeled it "unitary" is illogical and in apparent violation of the spirit of *Brown*. This effectively legalizes actions that intentionally produce segregation.

This report compares the court's assumptions about white flight, white return, and parental involvement to what actually happened in Norfolk after busing ended. The report also examines the local "compromise" plan that school officials implemented to try to compensate for the racial segregation in the new, nearly all-black schools. The analysis of this plan concludes that there is no evidence whatsoever that the plan can ever provide equal educational opportunity to black children in segregated schools. Achievement rates are abysmal in the segregated schools, especially when compared to the schools that are better integrated. The only

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[4]Brown v. Board of Education, 347 U.S. 483, 74 S Ct 686 (1954).

[5]It is necessary to clarify the difference between the legal terms "differential treatment" and "disparate impact." Differential treatment means intentionally treating a member or members of a suspect class – in this case racial minorities – differently because of their race. Disparate impact means that an action has had different results for a given group, in Norfolk's case, black schoolchildren. Differential treatment is always more suspect. Disparate impact assumes innocence and the burden of proof is usually placed on plaintiff challengers to prove intention.

clear effect of the Norfolk decision is that the degree of racial isolation, and, consequently, concentrated poverty, has risen dramatically in the city schools. Today, there is little hope that this troubling pattern will ever reverse itself. Meanwhile, the children in these segregated, low-achieving schools have no recourse under the law.

PART ONE

Racial Integration: Hard-Won, Short-Lived

The History and Legal Background of School Desegregation in Norfolk

In 1954, the year the Supreme Court declared illegal the intentional segregation of public schools, Norfolk's schools were segregated under state law. Despite the clear message sent by the court in *Brown v. Board of Education*, by 1956 the state of Virginia had still made no attempt to integrate its schools. On the contrary – the state Legislature enacted an official policy of "massive resistance" to racial integration.[6]

In response to the inaction, black Norfolk parents in 1956 sued the school board in *Beckett v. School Board of the City of Norfolk*, seeking access to the white schools.[7] In February, 1957, the District Court ruled that the school board could no longer refuse to admit students solely on account of race or color.[8] The school board avoided complying with the injunction by offering alternative excuses for denying the applications of the 151 black students who had applied for access to the white schools. U.S. District Court Judge Walter E. Hoffman ordered the school district to reconsider the applications. When the school district agreed to admit just 17 of the students, officials there also requested a one-year delay in the admission process. The Appeals Court affirmed Hoffman's decision and ordered that all the transfer requests be granted. Virginia Governor J. Lindsay Almond Jr. responded in 1958 by closing the schools slated for integration[9] in order to avoid desegregating them.

The civil rights lawyers continued to challenge the segregation with varying degrees of success under a renamed lawsuit, *Brewer v. School Board for the City of Norfolk*.[10] Finally, after much legal wrangling, the school board agreed to implement a desegregation plan. Civil rights lawyers again challenged that the school zones proposed in the plan would preserve segregation because they corresponded with segregated neighborhoods. The District Court did not approve a final plan until 1972, after it issued an order for a revised mandatory plan providing students with free bus

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[6]Adkins v. School Board of Newport News, 148 F.Supp. 430, 435 (E.D. Va. 1957).

[7]Beckett v. School Board for the City of Norfolk, 148 F.2d Supp. 430.

[8]Beckett v. School Board of the City of Norfolk, 148 F. Supp. 430, 2 Race Rel. L. Rep. (E.D. Va.), *aff'd sub nom.* School Board of the City of Newport News v. Adkins, 246 F.2d 325 (4th Cir.) *cert. denied*, 355 U.S. 855 (1957).

[9]3 Race Rel. L. Rep. 955 (1958).

[10]Brewer v. School Board for the City of Norfolk, 434 F.2d 408, 412 (4th Cir. 1970).

transportation.[11] The 1972 plan affected about 24,200 white students and about 24,600 black students.[12] It relied on mandatory student assignments and a program that allowed students to transfer from schools where they were in the majority to schools where they would be in the minority.[13] Initially, under the desegregation plan, only one of 39 elementary schools was more than 70 percent black.[14]

This was a considerable change from 1955, when the city maintained 21 all-black elementary schools and 21 all-white elementary schools.[15] Even in 1969, Norfolk still had 11 schools that were more than 90 percent black, 18 schools more than 90 percent white, and three schools between 13 percent and 40 percent black.[16]

From 1972 to 1975, Norfolk remained under court supervision and complied with the desegregation order. In 1975, at the request of the school board, U.S. District Court Chief Judge MacKenzie determined that the school board, after only four years of mandatory desegregation, had eliminated vestiges of racial discrimination from the schools. This is the ruling that granted Norfolk the "unitary status" label. In his order, Judge MacKenzie stated that the city had satisfied its duty to desegregate:

> . . . discrimination through official action has been eliminated from the system . . .this action is hereby dismissed, with leave to any party to reinstate this action for good cause shown.[17]

Unitary status was not an established legal concept in 1975.[18] Neither the civil

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[11]Brewer v. School Board for the City of Norfolk, 456 F.2d 943 (4th Cir. 1972).

[12]Riddick v. School Board of City of Norfolk, 784, F.2d 521, 541, 541 (1986).

[13]Plaintiff's Post-Trial Memorandum, Civil Action No. 83-326-N, Riddick v. School Board of the City of Norfolk: 10, 11.

[14]John McManus, "Busing: End of An Era?" *Norfolk Compass, Ledger Star*, 27 Sept. 1981.

[15]Norfolk City School Board, *Survey of the Norfolk, Virginia Public Schools* V.I (June 1955):75.

[16]Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, Riddick v. the School Board of the City of Norfolk (October 1985):1A.

[17]Recorded in *Riddick v. The School Board of the City of Norfolk*, Respondent's Supplemental Brief on Petition For a Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit, Docket No. 85-(1962): 4.

[18]According to Martha M. McCarthy, "nagging questions have persisted since the concept of "unitary status" was introduced in desegregation litigation...The terms "unitariness", "unitary school district" and "unitary status" have regularly appeared in desegregation cases, but courts have often addressed these concepts in general terms." Martha McCarthy, *Elusive Unitary Status*, 69 WESTS EDUCATION LAW REPORTER 9 (Oct. 1991).

rights lawyers nor the school officials involved could have anticipated the implications of such an order, and no party took any legal action in response to the order at that time. Despite its official release from court supervision, Norfolk continued to comply with all aspects of the previous desegregation order until 1981.

Confusion and Contradictions in the 1975 Order

Questions remain whether the declaration of unitary status was a so-called "final order"[19] that closed the original desegregation case and forever released the school board of its obligation to desegregate. The original order by Judge MacKenzie in 1975 seemed to imply that plaintiffs would be able to reopen the case if there were violations or changes made to the original plan. Specifically, the phrase, "with leave to any party to reinstate this action for good cause shown,"[20] appears to mean that continuing desegregation was still required, and that plaintiffs could challenge the school district if it failed to fulfill such requirements. But in his later ruling in *Riddick*, MacKenzie claimed that the 1975 order was final and did effectively release the school board from continuing desegregation.[21]

Even people who had been involved in the original litigation did not consider the 1975 order to be final. For example, John McLaulin, the former deputy superintendent who crafted the student desegregation plans, believed the school district was not released from its obligations in the *Beckett* litigation. "The Leona Pearl Beckett case was not concluded," he said, referring to the assumption in the district that desegregation plans would continue.[22]

McLaulin said school leaders initially sought the declaration of unitary status not so they could end integration, but because the constant reporting to the court was time-consuming and expensive.[23] McLaulin said that the school board, the NAACP, and the U.S. Department of Justice all believed that even after the 1975 order, any changes made to the original desegregation plan could be challenged again under *Beckett*.[24]

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[19]A final order is an order that terminated the litigation between the parties on the merits of the case. It leaves nothing to be done, but to enforce the current order by execution. Black's Law Dictionary, 5th ed., citing Richardson v. Jones, C.A. Pa., 551 F.2d 918, 921.

[20]Recorded in Riddick v. The School Board of the City of Norfolk, Respondent's Supplemental Brief On Petition For A Writ of Certiorari To The United States Court of Appeals For The Fourth Circuit, Docket No. 85-(1962):4.

[21]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 822.

[22]Interview with John McLaulin, 20 March 1993.

[23]Ibid.

[24]Ibid.

Looking For A Way Out

On September 11, 1981, the Norfolk school board, tired of administering a mandatory transportation plan, took its first official step to end mandatory busing. In a meeting that was closed to the public,[25] school board members addressed the issue for the first time, starting a contentious battle over whether to go to court to try to end the busing plan. Two years later, in a five-to-two vote, the school board approved a modified student assignment plan that would end busing of elementary school students, effectively creating 10 schools that were nearly all-black. Under the plan, three schools would be more than 70 percent white.[26]

According to Thomas Johnson, the school board chairman who instigated the move to end busing, school officials had several reasons to end busing. These justifications included the observation that schools seemed to be "resegregating" anyway and the strong perception among some whites that their neighborhoods were now integrated enough to create integrated neighborhood schools. Johnson also said his belief that the Reagan Administration's U.S. Justice Department would support the effort to end busing also influenced his decision to initiate the court battle.[27]

> I realized that the DOJ (Department of Justice) might go along with a plan to end busing. I wouldn't have done it if I thought I would have to fight the U.S. Government.[28]

The rationale behind the new plan – officially called "Proposal for a Voluntary Stably Desegregated School System" – was drawn largely from the controversial findings of Dr. David Armor. In anticipation of a court battle, the school board had hired Armor to write a report documenting the problems that would be caused by continued racial integration in the city schools. A social scientist specializing in studies of white flight for school districts resisting desegregation, Armor is well-known for his anti-busing stance, and his report suggested, among other things, that Norfolk's busing program had caused white flight from the city and its schools.

The new assignment plan that would create 10 nearly all-black elementary schools was challenged by parents of black schoolchildren in the lawsuit, *Riddick v. The School Board of the City of Norfolk*. But the district court judge, John MacKenzie,

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[25]John McManus, "Busing: End of an Era?" *Ledger Star, Norfolk Compass*, 27 Sept. 1981. The Rev. John H. Foster, one of three blacks on the school board, was not present at this meeting. Foster was not in Norfolk on the night of the meeting and believed that the school board was on vacation. Foster was not informed that the school board would be discussing a proposal to end busing. Interview with Rev. John H. Foster, March 18, 1993.

[26]Marjorie Mayfield, "Chaos absent in roll call of schools," *The Virginian Pilot and Ledger Star*, 16 Aug. 1987 (chart).

[27]Interview with Thomas Johnson, 18 March 1993.

[28]Ibid.

approved the new assignment plan, accepting the defendant's explanation that the proposed neighborhood school plan would ameliorate white flight. The court accepted Armor's contention that whites would be attracted back to the city schools and that parental involvement would increase.

The plaintiffs in *Riddick* appealed to the Fourth Circuit Court of Appeals, and the U.S. Department of Justice became actively involved in the *Riddick* case. William Bradford Reynolds, then chief of the Justice Department's Civil Rights Division, appeared on behalf of the Norfolk School Board. Reynolds had previously testified in speeches that busing was a failed social experiment and had encouraged school districts to get out of mandatory desegregation plans. In the Norfolk case, Reynolds argued that Norfolk, because it had been granted unitary status, should be treated exactly like a district that had never discriminated. This, Reynolds argued, meant that so long as the district meets the constitutional standard of showing that actions in question are rationally related to a government interest, the school board should be allowed to return to a neighborhood school plan.[29]

The Fourth Circuit Court of Appeals accepted the Justice Department's position. The civil rights lawyers appealed to the Supreme Court, but the high Court, in 1986, refused to hear the case. The school board, in turn, ended desegregation for elementary school students, making Norfolk the first city to dismantle its desegregation plan and resegregate with federal court sanction.

The Compromise Plan

After the ruling, a so-called "compromise" plan emerged that was publicly presented as a way to improve the educational opportunity for black children who would be assigned to the segregated schools.

The compromise plan included more money and smaller classes for the ten so-called "target" schools whose student populations had become 90 to 100 percent black because of the end to busing.[30] In 1982-83 these target schools had been between 61 percent and 84 percent black.[31]

Under the plan, the school board promised to hire a consultant to improve achievement in the schools, and teachers in the target schools would have higher levels of training than those in non-target schools. Advocates for black children received a firmer pledge by the school board to retain busing in the middle and high schools. The compromise plan included a multicultural education program to promote interracial contact, the option for students to transfer from schools where they were in

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[29]"A Top Justice official speaks out on ruling in Norfolk busing case," *The Virginian Pilot and Ledger Star*, 16 Aug. 1987 (chart).

[30]The school system has since re-named these schools "community schools," but this report will continue to refer to the segregated schools as target schools.

[31]William Keesler, "Wider data differ with Wilson school study," *The Virginian Pilot and Ledger Star*, 23 Jan. 1983.

the majority to schools where they would be in the minority, and an oversight committee to monitor the changes to ensure that the board keep its original promises.[32]

The compromise plan did not specify how long these changes would last, but Thomas Johnson recalls that the board was committed to the improvements "indefinitely," implying that there was little speculation on how long the programs would last.[33] And Dr. Lucy Wilson felt that the absence of a specified duration was meant to imply "that these things would go on forever."[34]

More recent history shows that these promised programs will not go on forever. In 1994, the target schools still had smaller classes and more money than other schools. But in 1991, the school board had disbanded the oversight committee that had monitored resource allocation. In addition, the multicultural program has essentially failed because it was not successful at promoting a sufficient interaction between the races, which was its primary mission.[35] White participation in the voluntary multicultural program was low, white parents were unaware of the program, there were too few events, and when events did take place, the groups were too large to promote meaningful interaction between the races, according to reports.[36]

The school administration is also under pressure to end busing of middle school students.[37] In 1992, a newly formed community group called Concerned Citizens began lobbying for this end.[38] Public pressure, of course, makes it more difficult for the board to keep its commitment to maintain busing in the upper grades, although as of March, 1994, school officials had made no move to end busing at the middle school level. Deputy Superintendent J. Frank Sellew said that administrators do intend to modify the current busing plan but have no intention of returning to neighborhood

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[32]Interview with Dr. Lucy Wilson. Dr. Wilson supported abandonment of the oversight committee because she believed it had fulfilled its duties. Although members of the oversight committee requested a greater mandate to address problems that they believed to be the real causes of the disparity between black and white achievement, Dr. Wilson did not believe that the committee members were qualified to fulfill that mandate.

[33]Johnson interview.

[34]Wilson interview.

[35]Philip Walzer, "School Board hears reports on flaws in cultural programs," *The Virginian Pilot and Ledger Star*, 25 Aug. 1989.

[36]Ibid.

[37]Rodney Ho, "When the Buses Stopped," *The Virginian Pilot and Ledger Star*, 17 January 1993.

[38]Ibid.

schools on that level.[39] Magnet schools and other methods of integration may be considered, he said, following extensive public hearings.

Finally, the number of students using the majority-to-minority transfer option has decreased, indicating the program is not a successful means for achieving integration.[40] This should not be surprising since such voluntary "freedom of choice" plans failed in the South in the early days of desegregation. The Supreme Court cases *Green* v. *County School Board of New Kent County*,[41] and *Swann* v. *Charlotte-Mecklenburg Board of Education*,[42] which implied the need for mandatory busing, were based in part on the finding that freedom of choice plans were ineffective.[43]

Parental involvement in the PTA has declined in target schools. The educational improvement plan, which included smaller classes and other provisions, has not reversed a trend of poor achievement in these schools. On every measure, test scores of students in target schools remain extremely low and the achievement gap between target school students and students in other schools is growing.[44]

The biggest promise of neighborhood elementary schools – that they would reverse a trend of white flight – has been broken. The following discussion examines each of the reasons for ending busing that were ultimately accepted by the court. This report argues that the court's superficial consideration of these so-called "legitimate" objectives resulted in a decision that was illogical and that did not serve the interests of the students.

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[39]Interview with J. Frank Sellew, 15 February 1994.

[40]In 1986, the number of students using the transfer option was 711. In 1988, 769; in 1990, 698. Data are unavailable for later years.

[41]Green v. County School Board of New Kent County, 391 U.S. 430 (1968).

[42]Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971).

[43]Gary Orfield, *The Reconstruction of Southern Education: The Schools and the 1964 Civil Rights Act* (John Wiley and Sons, Inc., 1969).

[44]Department of Research, Testing and Statistics, *1991 Iowa Test of Basic Skills Results for Target and Non-Target Schools* (July 1991):13; Community Oversight Committee Report (15 Sept. 1988):9. Also, The Department of Research, Testing and Statistics, Norfolk Public Schools, *1992-93 City-Wide Achievement Testing Program Report. Grades Three through Eleven* (1994).

PART TWO

The Role of Research
The Deciding Factor

The flawed logic leading to the *Riddick* decision was informed by questionable social science research about the causes of declining white enrollment in the district and, apparently, the judge's own misinterpretation of court testimony.

Specifically, the court found that, as a result of busing, Norfolk lost 6,000 to 8,000 white students who otherwise would have been enrolled in the system. To justify its conclusion, the court cited only the testimony of Dr. Robert Crain, a principal witness for the plaintiffs. The judge noted that Crain himself had admitted in an "unguarded" moment that the school population was moving towards a "high ratio of black to white."[45] But actually, Crain's stated position was that while the system's percentage of black enrollment was growing, it was growing for reasons other than busing.[46] So, it appears the court misinterpreted the very testimony it used to justify its conclusion.

Secondly, while the court decision does not say how the judge reached his conclusion, the conclusions mirror those offered by David Armor, the social scientist hired by the school board to write a report on the effects of white flight. Dr. Armor's 1982 report to the school board, submitted to the court, stated:

> ...about 8,000 white students appear to have been lost because of mandatory busing policies.[47]

More recent exhaustive analyses by Old Dominion University professors Leslie G. Carr and Donald J. Zeigler test Armor's predictions of the early 1980s about the number of white students who would have continued to leave the schools if busing stayed intact, and the number who would return if busing were to end. The research concludes that the predictions have all turned out to be inaccurate.[48] This finding is significant because the court's principal justifications for ending busing were that the move would reduce white flight and lure white students back into the city, thereby making integration more viable. Or in the federal court's words:

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[45]Phone interview with Dr. Robert Crain, 2 March 1993.

[46]Ibid.

[47]David J. Armor, Ph.D., *An Evaluation of Norfolk Desegregation Plans*, (December 1982):16.

[48]Leslie Carr and Donald Zeigler, "White Flight and White Return in Norfolk: A Test of Predictions", *The Sociology of Education* 63 (1990):272-282.

> so that the school administration will have considerably more white students for the purpose of integrating the system than it would have if the present plan [busing] continues in operation[49]

Armor estimated that between 1969 and 1981, Norfolk lost 19,000 white students from the K-12 grades.[50] About 42 percent of that loss (about 8,000 students), he said, was because of busing.[51] Projecting this 8 percent annual rate of loss into the future, he predicted that the school system would lose an additional 8,000 to 10,000 white students and would therefore be 75 percent black by 1987, if busing were to continue. This led Armor to conclude that busing would resegregate the school system.[52] Making an alternate estimate on the lower end, Armor calculated a smaller loss. With about 13,730 whites in the school system in 1981, a loss of 600 students a year would amount to about 2,400 students over four years, or a loss of 4.4 percent annually with an overall loss of 17.5 percent.[53] In response to criticism of the methods he used to reach the conclusions in his 1982 report, Armor in 1983 submitted to the school board a revised, supplemental report with a lower-end limit to his predictions of 3 percent white loss if busing were to continue.[54] That a researcher would submit two predictions is testimony to the imprecision of demographic prediction. In two subsequent analyses, Carr and Zeigler tested the predictions from the first report and the second supplemental report. In both cases, the researchers argue, Armor's predictions are inaccurate.

Carr and Zeigler's first paper set out to consider predictions found in Armor's 1982 report upon which the court relied. Analysis of Armor's first predictions is presented below.

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[49]Riddick v. School Board of the City of Norfolk, 627 F.Supp. Memorandum Opinion (1984) 15.

[50]Ibid, p. 274.

[51]Ibid.

[52]Armor, *Evaluation*.

[53]Ibid., p. 274.

[54]David J. Armor, Ph.D., "Response to Carr and Zeigler's "White Flight and White Return in Norfolk"," *The Sociology of Education* 64:134-139.

White Loss

Carr and Zeigler show that Armor predicted that the *proportion* of white students in the system would drop from 41 percent to either a high of 36 or a low of 32 percent by 1985 if busing were retained.[55] Carr and Zeigler tested Armor's hypotheses that "if busing continued after 1981, the loss of white students would have been 4.4 to 8 percent annually," and "as a corollary, the percentage of white students in the schools would have declined to 32 or 36 percent" overall in the district.[56]

But Carr and Zeigler show that the decrease in white enrollment "abruptly moderated" in 1982 and reversed in 1985 (before busing ended) for both black and white students.[57] At the K-5 level, enrollment of white students did decline in 1982 when 419 white students – or 6 percent – were lost. However, between 1982 and 1985, while busing was still in place, there was a gain of 266 white students, or about 4 percent.[58]

White Return

In considering these rates of loss and return for grades K-5, where busing ended, Armor predicted an annual gain of 7 percent in the white K-5 student population.[59]

But Carr and Zeigler found that in the first four years after busing ended, the annual gain in white students at the K-5 level that resulted *from the end of busing* was 2 percent or less. Again, Armor had predicted that the return of white students here would be about 7 percent a year.[60]

In grades K-5, the overall increase in white enrollment was about 3.2 percent[61] annually. To arrive at the 2 percent figure that was triggered specifically *by an end to busing*, Carr and Zeigler argue that any white gains in K-5 schools that never had busing in the first place should be subtracted from the overall total, because, obviously, a removal of busing would not have affected schools that are not bused.[62]

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[55] **Carr and Zeigler, "White Flight," p. 274.**

[56] Ibid.

[57] Ibid., p. 275.

[58] Ibid.

[59] Ibid., p. 274.

[60] Ibid., p. 279.

[61] Carr and Zeigler originally reported a 2.8 percent gain in white students, but based on the numbers in their Table 1, page 276, the gain would have equalled 12.8 percent over four years, which equals an annual average of 3.2 percent.

[62] Ibid., p. 277.

An increase of white enrollment at schools that were never bused, they argue, could not have been triggered by a removal of busing, which was never at these schools to remove. Carr and Zeigler conclude:

> The irony in the Norfolk case is that there actually was no white flight in the schools by the time the (district) court ruled on the case in 1984 or through the appeal period that ended in 1986. ...There was an immediate and significant increase in segregation when busing ended. Since then, the small gain in white students, which appears to be dwindling, has had no discernible effect on the trend toward increased segregation.[63]

Round II: Armor's Rebuttal

The Carr and Zeigler report spurred a detailed rebuttal from Armor, who defended his original predictions and stressed that his work had not "misled" a district court.[64]

Armor posits an "anticipatory" theory, saying that the stabilization to which Carr and Zeigler refer is a result of the school board's 1983 decision to try to end busing at the elementary grades. He argues that parents likely anticipated an end to busing and therefore felt safe to enroll their children in the schools. Although Armor offers no empirical evidence to support this theory, he argues that it is, in fact, logical to assume that whites would return to the school system in what he calls the "hiatus" period between the school board decision to attempt to end busing and the court's allowing the action in 1986. Contradicting Carr and Zeigler, Armor also claims that the whites who did return in this hiatus period and during the period after busing ended would, in fact, most likely return to the non-bused schools. Armor said this return would be triggered because such parents would no longer fear that those non-bused schools could some day be subject to busing. This is a sticking point between the debating social scientists, and neither side cites empirical research for its opinions.

However, it does seem highly unlikely that from 1982 to 1985 white parents would be assuming that busing would end, since at that time no school district in the United States had ever been granted court permission to end mandatory busing and return to neighborhood schools. It was also clear that the litigation would be protracted and last for years in the courts.

Armor also complains that Carr and Zeigler ignore a 1983 supplement to his report that modified his predictions. He claims the 3.2 percent increase in white return

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[63]Ibid., p. 281.

[64]Armor, "Response," pp. 134-139.

"falls within the range" of his newer, 1983, forecasts,[65] which reported a low-end limit of 3 percent.

The Final Word: A Reply to the Rebuttal

After this rebuttal from Armor, Carr tested Armor's lower, 1983, predictions, and found those too to be inaccurate. While Armor's predictions appear straightforward, they are difficult to test and analyze, because Armor made his predictions about white loss and white return based on the K-12 population, assuming that busing would end for all grades. Armor made these calculations and assumptions independently, even though the school board in Norfolk had never proposed a full-scale end to busing, but was considering an end to busing for elementary school students only. Because of this, the predictions need to be adjusted so changes on the K-5 level can be considered independent of the overall K-12 population.

White Loss

Using an adjustment technique suggested by Armor himself,[66] Carr considers Armor's minimum estimate of a loss of 6 percent – or about 300 white students per year in grades K-5 if busing were to stay in effect from 1981 to 1985. (Thus, over this four year period, 1,200 white students – or 17 percent of the 1981 K-5 white enrollment of 6,899 – would be lost, according to Armor.) But the percentage of white students did not decline at all during this time. In fact, it increased by four percent in grades K-5 during this period, while busing was still intact.[67]

The following chart, derived from Carr's paper, illustrates the findings:

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[65]Ibid., p. 137.

[66]Explaining how to adapt his predictions of white loss and white return, Armor simply splits his overall predictions in half. David Armor, "Response", p. 135.

[67]Leslie G. Carr, "Reply to Armor," *The Sociology of Education* 64 (1992):223-227.

Predicted and Actual Cumulative Changes in White Enrollment in Grades K-5 in Norfolk With Busing in Effect 1981-85[68]

Armor's prediction (minimum)	Actual Change
-20 percent	+4 percent

White Return

Carr argues that Armor exaggerated estimations of rate of white enrollment gain that would occur in the system after busing ended.

Under Armor's anticipatory theory, he argues that return since 1982, when the school board began considering an end to busing, should be included in the count of white students whose enrollment was potentially triggered by an end to busing. Although Carr clearly disagrees with the anticipatory theory, he argues that even if one were to accept it, the predictions are still wrong. Specifically, Armor's minimum prediction for white return in grades K-5 between 1982 and 1987 would be about 1,000 students over *five* years.[69] Armor then goes on to point out that the white gain was 1,136 from 1982 to 1989, arguing that this number is within his prediction. However, 1982 to 1989 is a *seven* year period, not a *five* year period, which is the time Armor's predictions cover. Adjusting the original calculations for a seven year period increases the original prediction by 400 students. The actual number of 1,136, as Carr points out, falls below Armor's minimum projection of white return over seven years: 1,400.[70] If one doesn't accept the anticipatory theory, obviously the predictions are off by even more.

Demographic prediction, as noted earlier, is an imprecise science, and under different circumstances it might be unfair to hold such predictions to rigorous standards. This research, however, was not presented as an academic paper, but was used as the foundation for an important court decision that denied students in elementary grades the right to a desegregated education. The school board argued and the court concluded that if the school system did not end busing, the system would lose so many white students that it would be impossible to integrate in the long run. However, the percentage of black children today in schools that are more than 75 percent black is much higher than it would be if population trends had continued and

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[68]Ibid., p. 22.

[69]Armor, "Response."

[70]Carr, "Reply To Armor," p. 226.

busing had stayed intact.

The chart below, derived from Carr's paper, illustrates the increase in the levels of segregation in the system for five years: 1985, before busing ended; 1986, the year busing ended; and for three years since busing ended, 1989, 1990, and 1993.

Percent of Norfolk's Black K-5 Elementary School Students Enrolled in Schools in which More Than 75 Percent of the Students are Black[71]

1985 (with busing)	11 %
1986 (post busing)	31
1989	39
1990	40
1993	41

Do Neighborhood Schools End White Flight?

In further evaluating the court's decision, it is important to reiterate the basic argument approved in *Riddick*. Without whites, Judge MacKenzie reasoned, racial integration would not be possible. So, he concluded, in order to have any kind of integration over the long term, busing must end.[72] Without an end to busing, the court concluded, the "Norfolk schools are faced with imminent resegregation."[73] Ironically, the alleged eventual resegregation provided a reason to resegregate immediately. Because of the 1974 Supreme Court decision *Milliken v. Bradley*,[74] which set up formidable barriers to city-suburban desegregation, there was never any discussion about integrating Norfolk city schools with nearby suburban ones. Ending busing actually sharply increased racial segregation between whites and blacks, and failed to trigger a significant increase in white enrollment.

Dr. Lucy Wilson, a school board member, characterized the current situation:

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[71]Data for years 1985, 1986, 1989 and 1990 derived from, Leslie Carr, "Reply To Armor," p. 226. Data from 1993 from Norfolk Public Schools, 30 September 1993 Membership. Both sets of data exclude pre-kindergarten students and students at Ghent, which has open enrollment.

[72]Riddick v. School Board of The City of Norfolk, 627 F.Supp. 814, 821.

[73]Milliken v. Bradley, 94 S.Ct. 3112 (1974).

[74]Ibid.

> The irony is that the school system is much more segregated now than it ever was under the busing plan. We now have eleven schools that are about 95% black so the practical reality is that we have returned to segregation.[75]

In other words, the court sought to halt resegregation by ordering resegregation. The order produced a plan that created 11 – now 10 because of consolidation – schools in which more than 90 percent of the students are black. (Diggs and Tucker Schools were consolidated to create Campostella School.) Additionally, as of the 1993-94 school year, Norview School was 79 percent black and Poplar Halls was 70 percent black. Ingleside and Coleman Place Elementary Schools are 69 percent black.

Meanwhile, the neighborhood school plan has allowed the district to create and maintain disproportionately white elementary schools as well. Specifically, Bay View is 76 percent white; Ocean View 67 percent; Taylor 63 percent; Calcott 60 percent; Tarralton 57 percent and Sherwood Forest 59 percent. In considering these enrollment figures, it is important to remember that the racial composition at the elementary level is 62 percent black and 34.5 percent white. This makes the racial disproportions even more apparent.

Resegregation has also caused severe concentrations of poverty in the target schools. This is significant because concentrated poverty has long been correlated with low academic achievement and high drop-out rates. In a majority of the segregated target schools, in fact, 100 percent of the students' poverty-level familiy incomes qualify the students for free school lunches.[76] Data were not available for any years prior to 1988.

The first chart below illustrates the severe resegregation that occurred under the school board's neighborhood school plan. The chart shows minority enrollment of the current target schools in three benchmark years: 1969, prior to the desegregation order; 1983, during busing; and in 1986, when the school board ended busing for elementary school students. The second chart shows the enrollment in the above-mentioned disproportionately white schools in 1985-86, during busing, compared to the 1993-94 school year. The third chart displays the percentage of children who qualify for free lunch in the target schools compared with the non-target school average.

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[75]Wilson interview.

[76]Correspondence from Peggy H. Lee, Senior Director, Child Nutrition Services, Norfolk, Virginia to Susan E. Eaton. 25 March 1994. On file with author.

Black Student Enrollment in Target Schools, Norfolk, Virginia for Various Years, 1969-1993.[77]

Target Schools	1969	1983	1986	1993
Bowling Park	100%	81%	98%	98%
Chesterfield	93%	70%	99%	99%
Diggs	100%	70%	100%	n/a[78]
Jacox[79]		65%	93%	100%
Monroe	99%	63%	99%	100%
Roberts Park	100%	77%	100%	100%
St. Helena	99%	58%	99%	100%
Tidewater	100%	69%	99%	99%
Tucker	100%	47%	99%	n/a[80]
Young Park	100%	57%	98%	99%

[77]Data from 1969 and 1983 from Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, Riddick v. School Board of the City of Norfolk (1985):Addendum 1B. 1986 information is from Norfolk Public Schools, 7th Day Enrollment, 10 September 1986.

[78]Diggs has been consolidated with Tucker to create Campostella School. Campostella School was 99 percent black in the 1993-94 school year, according to the Norfolk Public Schools 30 September 1993 Membership.

[79]Jacox was a Junior High School in 1969.

[80]Tucker has been consolidated with Diggs to create the Campostella School. The Campostella School was 99 percent black in the 1993-94 school year, according to the Norfolk Public Schools, September 30, 1993 Membership.

Racial Compositions of Selected Elementary Schools in 1985-86 (during desegregation) and 1993-94 (7 years after the end to desegregation)[81]

	1985-86	1993-94
Bay View	40% black 57% white	22% black 76% white
Ocean View	56% black 41% white	25% black 67% white
Taylor	37% black 60% white	34% black 63% white
Calcott	55% black 40% white	34% black 60% white
Tarrallton	64% black 31% white	37% black 57% white
Sherwood Forest	51% black 46% white	36% black 59% white

[81] Data for 1985-86 from 1st Day Enrollment, Norfolk Public Schools, 5 September 1985. Data from 1993-94 from NPS, Sept. 30, 1993 Membership.

The Percentage of Children Eligible for Free Lunch in Target Schools and the Average Number Eligible in Non-Target Schools, Norfolk, Virginia, 1994, or most recent year for which data is available[82]

SCHOOL	Percent of Students Eligible for Free Lunch
Bowling Park	100 %
Chesterfield	100 %
Campostella	82 %
Jacox	93 %
Lindenwood	82 %
Monroe	90 %
Roberts Park	100 %
St. Helena	85 %
Tidewater	100 %
Tucker	90 %[83]
Young Park	100 %
Target Average	**93 %**
Non-Target Average	**49 %**

[82]Correspondence from Peggy H. Lee, Senior Director, Child Nutrition Services, Norfolk, Virginia to Susan E. Eaton. 25 March 1994. On file with author

[83]Tucker was consolidated in 1991. This rate is derived from 1990 calculations.

The end of busing clearly did not reverse or stem white flight or enrollment declines. In fact, since busing ended, the percentage of white students at the elementary level has dropped five points from the most recent high of 42 percent in 1989 to 37 percent in 1993.[84] This decrease in the proportion of whites to blacks has occurred in spite of the well-publicized initial gains in white enrollment that occurred in the first years after busing ended.

At the elementary school level, the overall white enrollment in numbers actually *increased* during the final four years during busing. It rose from 7,911 in the 1982-83 school year to 8,073 in 1985-86. Post-busing, however, white enrollment has actually *decreased* from 7,461[85] in 1986-87 to 6,547 in 1993-94.[86]

Small declines are also apparent at the middle school level where busing was retained. However, the proportion of white students is increasing slightly at the high school level, where busing also was retained. Therefore, declines and increases in white enrollment are clearly not related exclusively to desegregation policy. The chart below illustrates these population changes.

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[84]Data for 1986-87 from Norfolk Public Schools, 7th Day Enrollment, 10 September 1986. Data for 1993-94 from 30 Sept. 1993 Membership NPS. These figures include pre-kindergarten.

[85]In 1986-87, sixth-graders were reassigned from elementary to middle school. Therefore, the overall population changes that occurred from 1985-86 to the 1986-87 school year do not reflect overall losses in population, but changes in what level of education students were attending. However, since the sixth-grade attendance areas are consistent from 1986 to 1993-94, comparisons are possible. Data for 1986 to 1987 from 7th Day Enrollment, 10 September 1986, Norfolk Public Schools.

[86]Data for 1993-94 from Norfolk Public Schools, 1st Day Enrollment, 7 September 1993.

Percentage of White Students in Elementary, Middle and High School Levels, Norfolk, Virginia 1982-1994.[87]

Year	*ELEMENTARY*	*MIDDLE SCHOOL/ JUNIOR HIGH*	*HIGH SCHOOL*
82-83	38%	38%	35%
83-84	39%	37%	37%
84-85	38%	35%	37%
85-86	38%	36%	37%
86-87	38%	36%	37%
87-88	40%	36%	36%
88-89	41%	37%	40%
89-90	42%	37%	39%
90-91	40%	36%	38%
91-92	40%	35%	39%
92-93	39%	35%	39%
93-94	37%	34%	39%

In its decision, the court of appeals implied that the district court had attributed the stabilization in white enrollment during 1980-83 to Navy housing patterns. It is unclear whether Navy housing patterns contributed to the stabilization during this period, but the court of appeals said it made its decision "absent this explanation." Even if Navy housing patterns did, in fact, contribute to the stabilization between 1980 and 1983, stabilization continued from 1983 to 1985. The district court did not use data from these years, and therefore never tried to explain or consider this continued

[87]Data from 1981-82 from Norfolk Public Schools, 7th Day Enrollment. Data for 1982-83 from NPS, 7th Day, 8 September 1982. Data for 1983-84 from NPS, 7th Day, 7 September 1983. Data for 1984-85 from NPS, 12 September 1984. Data for 1985-86 from NPS, 7th Day, 11 September 1985. Data for 1986-87 from NPS, 7th Day, 10 September 1986. Data for 1987-88 from NPS, 7th Day, 16 September 1987. Data for 1988-89 from 1st Day, 6 September 1988, NPS; Data for 1989-90 from NPS, 1st Day, 5 September 1989. Data for 1990-91 from NPS, 1st Day, 4 September 1990. Data for 1991-92 from NPS, 1st Day, 3 September 1991. Data for 1992-93 from NPS, 1st Day, 8 September 1992. Data for 1993-94 from NPS, 1st Day, 7 September 1993.

stabilization in making its decision.[88]

Stabilization in High Minority Schools

During the period of elementary school busing, some of the predominantly black elementary schools showed relative stabilization in their proportions of black and white students, though their total enrollment was declining. Even enrollment in some of the predominantly black schools where white flight was most common showed relative stabilization in proportion of black and white students during the final years of busing. Six schools – Diggs, Roberts Park, St. Helena, Tidewater, Tucker, and Willard – gained in the number of white students attending the schools. Though the charts below indicate that total white enrollment declined in six of the twelve high-minority schools, taken as a whole, black loss was larger than overall white loss, both in total numbers and in the percent loss in the final three years of busing, from 1982-83 to 1985-86. This is significant, because busing had been blamed for white flight from the schools. Since blacks were also leaving, and at much higher rates, it is clear that reasons other than the schools' integration policies were affecting the trend of enrollment loss. During these years, about 10.6 percent of the black enrollment in these schools was lost, and just 4.4 percent of white enrollment.

The first chart below displays total enrollment (black, white, and other races) in the target schools during the final years of busing. The second chart shows trends in total black enrollment, and the third chart shows trends in total white enrollment. The fourth chart displays the percentage of population loss for the overall population, the black population, and the non-black population.

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[88]Riddick v. School Board of the City of Norfolk, 784 F.2d 521, 541.

Overall Enrollment Trends in Resegregated Target Schools During Busing[89]

School	1982-83	1983-84	1984-85	1985-86	Change from 1981-82
Bowling Park	625	570	574	581	-44
Chesterfield	427	449	450	427	+0/-0
Diggs	320	363	424	437	+117
Jacox	675	680	685	614	-61
Lindenwood[90]	555	518	520	540	-15
Monroe	411	444	415	441	+30
Roberts Park	327	278	298	236	-91
St. Helena	422	381	388	379	-43
Tidewater	327	320	373	356	+29
Tucker	277	271	251	275	-2
Willard[91]	745	751	828	798	+53
Young	329	347	352	332	+3
OVERALL	**5440**	**5372**	**5558**	**5031**	**-409**

[89] Data for 1982-83 from Norfolk Public Schools, 7th Day Enrollment, 8 September 1982. Data for 1983-84 from NPS, 7th Day, 7 September 1983. Data for 1984-85 from NPS, 12 September 1984. Data for 1985-86 from NPS, 7th Day, 11 September 1985.

[90] Lindenwood became a target school in 1987 when its population became more than 90% black.

[91] Willard Elementary did not become an official target school. However, it is included in this data because its black population exceeded 70 percent and therefore it was one of the schools that was resegregated under the school plan.

Change in Total Black Student Enrollment in Target Schools During the Final Three Years of Busing[92]

School	1982-83	1985-86	Change
Bowling Park	499	408	-67
Chesterfield	283	289	+6
Diggs	216	260	+27
Jacox	408	360	-31
Lindenwood	420	362	+23
Monroe	272	268	+1
Roberts Park	266	141	-122
St. Helena	255	214	-147
Tidewater	233	216	-8
Tucker	158	149	-29
Willard	542	493	+101
Young Park	211	206	-0/+0
OVERALL BLACK ENROLLMENT – TARGET SCHOOLS	**3763**	**3366**	**-397**

[92]Calculations derived from data in the following sources: Data for 1982-83 from Norfolk Public Schools, 7th Day Enrollment, 8 September 1982. Data for 1983-84 from NPS, 7th Day, 7 September 1983. Data for 1984-85 from NPS, 12 September 1984. Data for 1985-86 from NPS, 7th Day, 11 September 1985.

Change in Total White Student Enrollment in Target Schools During the Final Three Years of Busing[93]

School	1982-83	1985-86	Change
Bowling Park	97	98	-11
Chesterfield	122	110	-21
Diggs	87	122	+31
Jacox	264	186	-70
Lindenwood	127	129	-44
Monroe	96	116	-27
Roberts Park	51	68	+8
St. Helena	142	135	+45
Tidewater	84	98	+14
Tucker	109	93	+4
Willard	194	177	+17
Young Park	118	94	-15
OVERALL BLACK ENROLLMENT – TARGET SCHOOLS	**1491**	**1426**	**-65**

[93]Calculations derived from data in the following sources: Data for 1982-83 from Norfolk Public Schools, 7th Day Enrollment, 8 September 1982. Data for 1983-84 from NPS, 7th Day, 7 September 1983. Data for 1984-85 from NPS, 12 September 1984. Data for 1985-86 from NPS, 7th Day, 11 September 1985.

Overall Percent Loss in Enrollment in Target Schools, Blacks and Whites During Final Three Years of Busing[94]

	1982-83	1985-86	Total and Percent Loss
Black	3763	3366	-397 students or **10.6 percent black loss**
White	1491	1426	-65 students or **4.4 percent white loss**

[94]Calculations derived from data in the following sources: Data for 1982-83 from Norfolk Public Schools, 7th Day Enrollment, 8 September 1982. Data for 1983-84 from NPS, 7th Day, 7 September 1983. Data for 1984-85 from NPS, 12 September 1984. Data for 1985-86 from NPS, 7th Day, 11 September 1985.

PART THREE

Is Busing Really to Blame?

Armor and the court also failed to consider reasons other than busing that might have influenced the decisions of middle class people to leave Norfolk and the public schools.

In particular, the lack of middle class housing in Norfolk likely contributed to a loss of students from middle-income families, both black and white. Norfolk's relatively high crime rate may also have spurred middle class families to choose other communities. This argument is supported by the fact that urban middle class flight occurred nationwide, even in cities that do not have mandatory busing. The court and Armor also ignored the long-term trends of white migration to suburbs and black migration to cities. These factors are examined in the following sections.

Limited Housing Stock: A Barrier to an Integrated Norfolk

Norfolk has a disproportionate share of low-income housing. The city simply has fewer non-low-income single-family homes available than do neighboring communities such as Virginia Beach and Chesapeake. The obvious result is that the growing number of middle and upper middle class families, no matter their race, settled in communities other than Norfolk. Because Norfolk provided low-income housing, families with low incomes, many of them black, settled in the city. Statistics below also suggest that families who lived in Norfolk and who wanted to move into larger homes as their incomes rose may have left Norfolk for Chesapeake or Virginia Beach.

During the years of busing, Norfolk builders constructed far fewer middle- class homes than did neighboring Chesapeake and Virginia Beach. During the 1970s, for example, on an annual average, Norfolk built 226 single-family homes, Virginia Beach built 2,072, and Chesapeake built 847.[95] Thirteen of every 14 new homes were built outside the city.

By 1980, compared with Norfolk, Virginia Beach had a disproportionate amount of middle- and upper-income housing and Chesapeake had a disproportionate number of middle-income housing units, while Norfolk had a disproportionate number of lower-income units. Norfolk city planning officials determine "fairshare distribution" in various price ranges by calculating the overall number of homes, and then determining what percentage share of homes each city or town had. For example, in 1990, suburban Virginia Beach had twice its fairshare distribution of homes worth more than $200,000 and only one-fourth its fairshare distribution of homes worth between $60,000 and $80,000.[96] Virginia Beach had less than 25 percent of its fairshare distribution of

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[95]City Planning and Codes Administration, City of Norfolk, *Comparison: 1980 Units by Valuation, Southside Hampton Roads Communities.*

[96]Ibid.

housing worth less than $25,000.[97]

In contrast, Norfolk had just about 60 percent of its fairshare distribution of homes worth more than $200,000 and about half its fairshare distribution of homes worth between $60,000 and $80,000.[98] Perhaps most significant, the city had 140 percent of its fairshare distribution of homes worth less than $25,000.[99]

These housing patterns resulted in Norfolk attracting a disproportionate number of low-income residents. In 1990, the city had about 138 percent of its fairshare distribution of persons whose incomes were less than 50 percent of the median income. Chesapeake had only about 76 percent of its fairshare distribution of this group, and Virginia Beach had about 60 percent.[100] Certainly, these patterns of housing and income patterns repeat themselves in the schools.

Middle Class Flight

Findings by Dr. Paul T. Schollaert, dean of arts and sciences at Illinois State University, also challenge the white flight model.

Schollaert's studies show not only that middle class whites were leaving Norfolk, but that middle class blacks were leaving as well. This suggests that factors other than racially integrated education were driving people out of the city.

Dr. Schollaert claims that the *proportion* of middle class blacks who actually left Norfolk is higher than the *proportion* of middle class whites who left Norfolk.[101] Since blacks would not leave a city because of an increase of blacks in their schools, one can see there are other factors at work besides racial integration that cause people to leave a city.

Other evidence in the Norfolk case suggests that middle class flight is, and has been, a trend in all cities, not just those with mandatory busing. Dr. Schollaert, Dr. Reynolds Farley, and Dr. Robert Crain, expert witnesses for the plaintiffs in the *Riddick* trial, all argued that as cities age, the population of the inner city, and therefore the city school enrollment, typically decreases.[102] Farley and Crain both cited Chicago, Kansas City, and Baltimore as examples of cities that experienced a large loss in

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[97]Ibid.

[98]Ibid.

[99]Ibid.

[100]City Planning and Codes Administration, City of Norfolk, *Comparison: Fairshare Income Ranges, Southside Hampton Roads Communities.*

[101]Interview with Dr. Paul Schollaert, 18 March 1993. Also: Amy Goldstein, "Scholar sees mistake in study's conclusions about busing, learning," *The Ledger Star*, 3 Jan. 1983). Schollaert produced the study under contract for *The Ledger Star.*

[102]Ibid.

white population without busing.[103] Examples of cities similar in size to Norfolk yet without busing include Akron, Ohio, and Gary, Indiana. Akron lost 35 percent of its white population between 1968 and 1978, and Gary lost 74 percent.[104]

In a 1982 study of 52 desegregation plans, social scientist Mark A. Smylie concluded that schools with voluntary desegregation plans have experienced just as great a decline in white enrollment as schools with mandatory busing programs.[105] A 1992 study from the National School Boards Association indicated a similar pattern, where white enrollment declined as much or more in some cities with no desegregation plan or with voluntary plans as it declined in cities with mandatory busing plans.[106] White enrollment decline has many causes.

Crime: Another Plausible Reason for Suburban Growth

Higher relative crime rates in cities such as Norfolk is another plausible explanation for why people may have chosen to leave the city or to settle elsewhere.

The chart below illustrates crime index totals and populations in Norfolk and neighboring communities.[107] Although the population in 1970 in Norfolk was roughly twice that of Virginia Beach and three times that of Chesapeake, the crime index total for Norfolk in 1971 was more than three times greater than Virginia Beach, and six times greater than Chesapeake.[108] This indicates a much higher crime rate in Norfolk even when one accounts for differences in population. By 1980 the population in Norfolk and Virginia Beach were nearly equal, about two and a third times that of Chesapeake, while the total crime index for Norfolk was one-third higher than Virginia Beach and nearly five times higher than Chesapeake.[109]

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[103]Ibid.

[104]William Keesler, "Busing witness urges school merger," *The Ledger Star*, 14 Feb. 1984.

[105]Mark Smylie, "Reducing Racial Isolation in Large School Districts: The Comparative Effectiveness of Mandatory and Voluntary Desegregation Strategies." *Urban Education* 17 (January 1983):447-502.

[106]Gary Orfield and Franklin Monfort. *The Status of School Desegregation: The Next Generation*. For the National School Boards Association (1992):21,22.

[107]Crime Index Total is based upon offenses and attempts to commit offenses in the following categories: murder and non-negligent manslaughter; forcible rape; assault; robbery; aggravated assault; burglary; larceny-theft; vehicle theft.

[108]Federal Bureau of Investigation, *Crime in the United States 1980, Uniform Crime Reports*, pp. 133,134.

[109]Ibid.

Crime Index Total for Norfolk, Virginia Beach, and Chesapeake, 1971, 1975 and 1980.[110]

	Chesapeake	pop.	Virginia Beach	pop.	Norfolk	pop.
1970		90,000		172,000		308,000
1971	2,263		4,194		13,939	
1975	4,778		10,379		22,603	
1980	4,604	114,000	15,069	261,000	20,183	263,000

Was it Busing or the Lack of Buses?

If one assumes that busing did contribute to the decline in white enrollment in its early years, part of the problem may have been the lack of adequate buses in the program's first year. In busing's first year, the district faced severe transportation difficulties. Children were left stranded at bus stops. The city's bus company, Virginia Transit Service, responded to a federal price freeze on transportation by refusing to provide the extra services required by the busing plan. While the district needed transportation services for 20,000 students, the bus company provided services for just 12,000.[111]

During this first year Norfolk lost its greatest percentage of white students, many of them "no shows." Although it is impossible to prove with certainty that the transportation problem was the direct cause for the flight, the link is probable. "We lost about 5,000 children through the first four or five weeks of 1971,"[112] former Deputy Superintendent John McLaulin recalled, referring to the problems associated with the

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[110]Figures for 1971 found in the Criminal Justice Research Center, *Sourcebook of Criminal Justice Statistics 1973* (Albany, N.Y.):236, 238, 239. Figures for 1972 found in CJRC, *Sourcebook . . . 1974*, pp. 287, 289, 290. Figures for 1973 found in CJRC, *Sourcebook . . . 1975*, pp. 473, 475. Figures for 1974 found in CJRC, *Sourcebook . . .1976*, p. 500. Figures for 1975 found in Federal Bureau of Investigation, *Crime in the United States 1975, Uniform Crime Reports*, pp. 127, 128. Figures for 1976 found in FBI, *Crime . . . 1976 . . .*, pp. 120, 121. Figures for 1977 found in FBI, *Crime . . . 1977 . . .*, p. 119. Figures for 1978 found in FBI, Crime . . . 1978 . . ., pp. 131, 132. Figures for 1979 found in FBI, *Crime . . . 1979*, pp. 133, 134. Figures for 1980 found in FBI, *Crime . . . 1980 . . .*, pp. 133, 134.

[111]Interview with John McLaulin, 20 March 1993.

[112]Ibid.

transportation problem.

Nevertheless, in reaching its conclusions about white flight, the court did not even consider the impact of a transportation problem that was so severe that it left children with no way to get to school.

School Satisfaction and Parent Reasons for Leaving Norfolk

Implicit in the court's conclusion that neighborhood schools would end white flight was the belief that parents would have a more positive attitude about a school system that had neighborhood schools.

In his previous report to the court, Dr. Armor had asked survey respondents to answer the following question first assuming that busing would continue, and to answer it a second time assuming that busing were stopped:[113]

> Suppose you had a friend or new co-worker moving into the Norfolk area for the first time and this family asked you about elementary schools for their children. Assuming their income level and feelings about education are about the same as yours, would you advise them to live in Norfolk and send their children to public school, live outside Norfolk and send their children to public school in another district or send their children to private or parochial school?[114]

Based on the responses to his survey, Dr. Armor predicted in his report to the school board that 89 percent of white parents and 80 percent of black parents would recommend the public schools if busing were to end. Armor predicted an increase in parent satisfaction if busing were to end.

But a parent survey conducted at the Institute for the Study of Minority Issues at Old Dominion University concludes just the opposite. The survey reveals that the percentage of parents who would recommend the public schools to friends or co-workers if busing ended was lower than Armor originally predicted in 1982.[115] To complete the survey, the researchers duplicated the above-quoted question asked of respondents by Dr. Armor.

The later Old Dominion survey, conducted in 1987 after busing actually did end, showed that just 72 percent of white parents and 65 percent of black parents said they would recommend the public schools in this way.[116] This is not to suggest that the end of busing increased dissatisfaction. Obviously, according to these findings, an end to busing did not make black parents more supportive of the schools.

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[113]Carr and Zeigler, "White Flight," pp. 272-282.

[114]As quoted in Carr and Zeigler, "White Flight," p. 279.

[115]Carr and Zeigler, "White Flight," pp. 272-282.

[116]Ibid., p. 279.

Carr and Zeigler also interviewed parents who said they had considered private school for their kindergarten-age student, but who had ended up choosing public school. Only 9 percent of the parents stated that the end of busing was the "main" reason for their choosing public school. The most popular reason given was the "high cost of private schools," at 36 percent, followed by the "quality of education" in the public schools at 19 percent. The survey also shows that 91 percent of parents surveyed who transferred a child from public to private school in 1986 gave some reason other than busing as the main reason for the transfer.[117] These data suggest that parents who were displeased with Norfolk's schools were displeased for reasons other than busing.

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[117]Ibid.

PART FOUR

Evaluating the Compromise Plan

Soon after busing was dismantled for elementary school students, the school board developed a plan designed to solve racial inequalities in a different way. This compromise plan assumed that equal education could be achieved in isolated, one-race schools. It also retained a transfer plan that sought to create integration by allowing black children to transfer from schools where they are in the majority to schools where they are in the minority. The following sections analyze elements of the compromise plan and suggest that, so far, the plan has not been successful at improving student achievement or at creating integration.

Educational Opportunity?

During the *Riddick* trial, Norfolk School Superintendent Gene Carter claimed that a new "school effectiveness" program would narrow the achievement gap between white and black students.[118] The program was to include a pre-school program and an alternative school program that offered individualized instruction. A multicultural program was to promote interaction between the races. The program also sought to increase student achievement by involving more parents through conferences and the creation of parent information centers.[119]

Despite the implementation of this plan and despite the fact that target schools receive more money per student, have more library books, smaller classes, and better educated teachers,[120] test scores for students in the target schools have remained low. The achievement gap between the races and between students who attend target schools and non-target schools has increased significantly since 1990. Scores in target schools, meanwhile, are decreasing overall, according to the most recent data available.

Declines on the SRA Measure

Findings in a 1993 study by Vivian W. Ikpa of the University of Central Florida suggest that, on at least one measure, achievement test scores for black fourth grade girls and boys declined after the elimination of busing for integration.[121] Ikpa compared

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[118]Riddick v. School Board of the City of Norfolk, Trial testimony, p. 635.

[119]Ibid., pp. 607-627.

[120]*Community Oversight Committee Report*, 31 August 1990, p. 3.

[121]Vivian Ikpa, "The Effects of Changes in School Characteristics Resulting From The Elimination of the Policy of Mandated Busing for Integration Upon the Academic Achievement of African-American Students," *Educational Research Quarterly* 17: 1, 19-29.

scores on the Science Research Associates Assessment Survey Series (SRA) of black and white students for the 1985-86 school year, when there was busing in the district, to scores in the 1986-87 school year, after busing had ended. Ikpa controlled for several co-variables such as school racial composition, teacher and student expenditure, instructional materials, substitute and teacher salaries, the age of the school building, the percentage of teachers with advanced degrees, and the number of library books in a building.[122]

Ikpa found that the mean score for black children during busing was 52.6 in the busing year of 1985-86 and 47.2 for the non-busing year of 1986-87, a mean difference of about 5.4.[123] Further, the achievement gap between black and white students increased after the elimination of busing. For white students, the mean score during busing was 68.5. However, Ikpa notes, the gap between the two groups increased from 15.9 in the busing year to 18.3 after the elimination of mandated busing.[124] The scores of black students declined by 5.3 points after busing was eliminated, while the scores of white students declined by 2.8 points.[125] The gap is statistically significant.[126] Ikpa's findings show that "school level" characteristics, such as racial composition and the other variables, account for only about 8 percent of the variance in test scores.[127]

Ikpa concludes:

> Analysis of data generated by this study indicated that the elimination of the policy of mandated busing for integration had a significant negative effect upon the overall achievement test scores of African-American students...Given these findings, policymakers should reevaluate the costs and benefits of

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[122]Ibid., p. 19.

[123]Ibid., p. 23.

[124]Ibid., p. 24.

[125]Ibid.

[126]The T-Test statistical procedure was performed to determine if a statistically significant difference existed between the SRA composite test scores of African-American students during the existence of the policy of mandated busing and after the elmination of the busing policy. Ikpa concludes that the mean difference was statistically significant ($P<.05$).

Multiple regression was undertaken to determine if the variance in achievement test scores of African-American fourth-grade students may be attributed to changes in the selected school characteristics that resulted from the elimination of busing. The adjusted R square for the eleven characteristics was .08293 with an F value of 2.6605. Only 8 percent of the variance in achievement test scores of black students may be accounted for by the 11 selected school characteristics. The F value suggested that this 8 percent variance was not statistically significant ($P<05$).

[127]Ibid., p. 19.

maintaining segregated schools. Segregated educational settings may serve to retard the development of children.[128]

The Iowa Test of Basic Skills: Declining Scores, Widening Gaps

Other data confirm the findings that achievement remains low. The most recent data, from the 1993-94 school year, indicate that percentile ranks for third-graders on the Iowa Test of Basic Skills declined in 8 of the 10 segregated target schools since 1989, and percentile ranks for fourth-graders declined in 6 of the 10. Perhaps more significant, the gap between achievement in the target schools and in the non-target schools has increased over the years.

The chart below lists mean percentile ranks of average test scores from the Iowa Test of Basic Skills for third- and fourth-graders in target schools from 1989 to 1993. The first chart displays testing trends for third-graders in target schools. The second chart displays testing trends for fourth-graders. It should be noted that students in target schools failed to reach the national average (50th percentile) in every school for both grades with the exception of Bowling Park fourth-graders. Students in the more-integrated non-target schools consistently scored above this national average, as evidenced by average overall scores displayed in the third and fourth charts, which illustrate gaps in achievement between target and non-target schools.[129]

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[128]Ibid., p. 28.

[129] All calculations were conducted by using original test score data collected by school and provided by the school system for various years, rather than the scores presented in summary reports presented by the school system.

Mean Percentile Ranks of Average Scores on the Nationally Normed Iowa Test of Basic Skills For Third-Graders in Target Schools (schools more than 90 percent black) 1989-1993[130]

Target School	89	90	91	92	93	Change
Bowling Park	46	62	47	57	45	-1 point
Campostella	n/a	n/a	n/a	46	33	-13 points[131]
Chesterfield	34	30	34	43	42	+8 points
Diggs Park	30	26	50	n/a	n/a	n/a
Jacox	31	30	29	25	24	-7 points
Lindenwood	43	49	44	34	32	-11 points
Monroe	48	44	41	46	48	-0 points
Roberts Park	27	42	53	26	22	- 5 points
St. Helena	39	55	44	31	28	- 11 points
Tidewater	31	36	30	33	22	- 9 points
Tucker	48	39	27	n/a	n/a	n/a
Young Park	32	41	35	32	42	+10 points
Target Average	37	41	39	37	34	**overall change -3 points**

[130]Department of Research, Testing and Statistics, Norfolk Public Schools, *1991 ITBS Test Results for Target and Non-Target Schools*, July 1991, p. 13. Scores for later years provided by Department of Research and Testing, Norfolk Public Schools.

[131]This loss occurred from 1992 to 1993. Diggs and Tucker were consolidated to create Campostella.

Mean Percentile Ranks of Average Score on the Nationally Normed Iowa Test of Basic Skills For Fourth-Graders in Target Schools (schools more than 90 percent black) 1989-1993[132]

Target School	89	90	91	92	93	Change
Bowling Park	48	38	54	64	61	+13 points
Campostella	n/a	n/a	n/a	37	29	-9 points[133]
Chesterfield	38	44	35	30	35	- 3 points
Diggs Park	43	38	37	n/a	n/a	n/a
Jacox	32	41	35	30	25	- 7 points
Lindenwood	51	43	50	46	34	-17 points
Monroe	27	40	33	34	43	+16 points
Roberts Park	34	43	45	48	35	+1 points
St. Helena	n/a	43	46	38	38	-5 points
Tidewater	27	47	43	33	33	+6 points
Tucker	44	41	27	n/a	n/a	n/a
Young Park	28	37	34	36	20	- 8 points
Target Average	37	41	40	40	35	**overall change - 2 points**

[132] Department of Research, Testing and Statistics, Norfolk Public Schools, *1991 ITBS Test Results for Target and Non-Target Schools*, July 1991, p. 13. Scores for later years provided by Department of Research and Testing, Norfolk Public Schools.

[133] This loss occurred between 1992 and 1993. Diggs Park and Tucker were consolidated to create Campostella.

Average Percentile Ranks on Iowa Test of Basic Skills for Segregated Target Schools and Non-Target Schools, 1989 to 1993, Third Graders.[134]

	1989	1990	1991	1992	1993
Target	37	41	39	37	34
Non-Target	58	56	57	58	55
Gap	21 points	15 points	18 points	21 points	21 points

Average Percentile Ranks on Iowa Test of Basic Skills for Segregated Target Schools and Non-Target Schools, 1989 to 1993, Fourth Graders[135]

	1989	1990	1991	1992	1993
Target	37	41	40	40	35
Non-Target	55	57	56	57	58
Gap	18 points	16 points	16 points	17 points	23 points

These data illustrate that students in the target schools score consistently low compared with their counterparts nationally and compared with students in non-target schools in Norfolk. Again, aggregate scores of students in generally low-income schools are usually relatively low for a variety of complex reasons, not all of which can be traced to school policies. The argument is not that the difference in scores is surely not caused by resegregation per se, but these data demonstrate that target school students are in schools with much lower levels of academic competition and opportunity. The test scores make it clear that the in-school strategy of the school effectiveness plan did not bring target school students close to the achievement level

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[134]Department of Research, Testing and Statistics, Norfolk Public Schools, *1991 ITBS Test Results for Target and Non-Target Schools*, July 1991, p. 13. Scores for later years provided by Department of Research and Testing, Norfolk Public Schools.

[135]Department of Research, Testing and Statistics, Norfolk Public Schools, *1991 ITS Test Results for Target and Non-Target Schools*, July 1991, p. 13. Scores for later years provided by Department of Research and Testing, Norfolk Public Schools.

average of students in non-target schools. In fact, the gap has grown wider with time. The program simply failed to improve the achievement of target school students or narrow the gap between white and black, which city educators promised in their court testimony it would. On the contrary, scores are declining in target schools.

In 1991, black third-graders in integrated schools scored on average 16 percentage points below their white counterparts. But black third-graders in segregated target schools scored even worse than the black third-graders in non-target schools. Specifically, the black children in target schools scored an average of five percentage points lower than black third graders in non-target schools and an average of 21 points lower than white third-graders.[136]

Although the average fourth grade achievement of blacks and whites taken together decreased for a while after busing ended, overall, black students' scores on the Iowa Tests increased by more than twenty points during busing, while white students' scores increased by nearly twenty points.[137]

Dr. Armor attributed the increase in achievement to the Competency Challenge program that was designed to increase test scores. But this explanation is inadequate because scores of both blacks and whites began increasing prior to the implementation of the Competency Challenge program.[138] Integration then, obviously did not damage educational achievement and may have been related to the gains. Resegregation, on the other hand, may very well be related to the achievement disparities.

Literacy Tests: Higher Rates of Failure in Segregated Target Schools

The State of Virginia requires all sixth-graders to pass basic tests in writing, reading, and math before earning promotion to the ninth grade. This program, called the Virginia Literacy Testing Program, also administers tests to students in the fourth and fifth grades in order to determine which students may be in danger of failing the required test in the sixth grade. A student failing to meet minimum standards on any one of the fourth- and fifth-grade tests will receive remedial help in the particular subject area. This section analyzes passing rates on the literacy tests for students in target schools and non-target schools. The data from 1993 tests reveal a sizable gap between the percent of students passing these basic tests in the segregated target schools and the percent of students passing the tests in the non-target schools. In all subject areas in every grade, students in target schools, on average, did far worse than their counterparts in non-target schools.

The first chart displays overall passing rates for fourth-graders on the writing

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[136]Department of Research, Testing and Statistics, Norfolk Public Schools, *1991 ITBS Test Results for Target and Non-Target Schools*, July 1991, p. 11.

[137]Armor, *Evaluation*, Figure 5.

[138]Ibid.

and reading portions of the literacy "predictor" test used to identify students in need of remedial help. The second chart displays fifth-grade scores for the same groups in reading and mathematics pretest, which is also used to identify students in need of remedial help. The third chart displays passing rates on the mathematics, writing, and reading portions on the actual mandated test in the sixth grade.[139]

Average Percentage of Students Passing the 4th Grade Literacy Predictor Test in Reading and Writing For Target and Non-Target Schools, 1993.[140]

	READING	WRITING
TARGET SCHOOLS	34% PASSED	63% PASSED
NON-TARGET SCHOOLS	66% PASSED	81% PASSED

Average Percentage of Students Passing the 5th Grade Literacy Pretest in Mathematics and Reading for Target and Non-Target Schools, 1993[141]

	MATHEMATICS	READING
TARGET SCHOOLS	60% PASSED	60% PASSED
NON-TARGET SCHOOLS	79% PASSED	73% PASSED

[139]Though these are sixth-grade scores, a middle school grade, the data was separated to analyze scores based upon a child's fifth-grade school.

[140]Calculations derived from data in Department of Research, Testing and Statistics, Norfolk Public Schools, *City-Wide Achievement Testing Program Report*, 1994, p. 85.

[141]Ibid., p. 86.

Average Percentage of Students Passing the 6th Grade Literacy Testing Program in Reading, Writing, and Mathematics for Target and Non-Target Schools, 1993[142]

	READING	WRITING	MATHEMATICS
TARGET SCHOOLS	49% PASSED	57% PASSED	61% PASSED
NON-TARGET SCHOOLS	76% PASSED	70% PASSED	82% PASSED

The Cognitive Abilities Test: Gaps Emerge Early

The Cognitive Abilities Test measures verbal development among elementary school students and was delivered to Norfolk's third-graders in 1988 and fourth-graders in 1987.

For third-graders, the results show that non-target students scored in the 50th percentile while students in segregated target schools scored in the 23rd, a difference of 27 percentile points. In the fourth grade, the difference was 25 points, non-target students scoring in the 52nd percentile, and students in the segregated target students scoring in the 27th percentile.[143]

It is also important to note that African-American students in target schools did worse on this test than those in non-target schools. Specifically, African-American non-target school students scored in the 36th percentile while African-American students in the segregated target schools scored in the 23rd percentile, a difference of 13 percentile points.[144]

Majority-to-Minority Transfer Program

As part of the plan to end busing, the school board continued its optional transfer program that allowed black students from schools where their race constituted at least 70 percent of the school population to transfer to schools where their race was in the minority.

According to McLaulin, the school system did not recruit the district's 900 white students in the three schools with populations of over 70% white in 1986 because

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[142]Ibid., p. 87.

[143]Department of Research, Testing and Statistics, Norfolk Public Schools, *Comparison of Standardized Composite Test Scores For Target and Non-Target Schools*, 1991, Figure 4.

[144]Ibid., Figure 5. Comparisons such as these were not available for previous or subsequent years.

school officials assumed white students would not take advantage of the plan.[145]

The way the transfer program is currently organized, it places the burden of integration solely on black children. Despite this obvious imbalance, the court approved of the majority-to-minority ("M/M") transfer plan as a viable method of voluntary integration. This model is precisely the type of freedom of choice plan that proved unsuccessful, and was a basis for the Supreme Court decisions in *Green* and *Swann* that advocated the use of mandatory transportation to achieve racial integration in schools. Freedom of choice plans, historically, have had low rates of participation in the South – often only one or two percent of either race participated.[146]

In Norfolk, the program has done little to further integration because so few students participate in it. The number of students participating is significantly below the optimistic projections that may have influenced the court's decision to accept the plan. The court accepted Dr. Armor's predictions that 10 to 15 percent of eligible students would transfer in the first year and 30 to 40 percent would transfer in the second year.[147] Dr. Armor based his predictions on a survey conducted in 1982 in which he interviewed 850 parents with school-age children in Norfolk.[148] However, Armor failed to consider the experience of other transfer programs in the country, which in general have much lower participation rates than Armor predicted.[149]

Although both the court and Dr. Armor accurately predicted the participation rate for the program's first year, they greatly overestimated the number of students who would transfer after five years.

Specifically, in 1986-87, of 5,011 eligible black children, 711, or 14%, used the option. The number of students transferring rose by only 2 percent after five years. In 1990-91, of 4,338 eligible black students, 698, or 16%, used the option.[150] About 10 percent of eligible students used the transfer program in the 1992-93 school year, according to one report.[151]

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[145]McLaulin interview.

[146]Gary Orfield, *The Reconstruction of Southern Education* (John Wiley and Sons, 1969).

[147]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 818.

[148]Armor, *Evaluation*, p. 11.

[149]Orfield, *Reconstruction*.

[150]Community Oversight Committee Report, 31 Aug. 1990, p. 32.

[151]Rodney Ho, "When the Buses Stopped: Promises and Reality," *The Virginian Pilot and Ledger Star*, 17 January 1993.

Parental Involvement

The court expressed the hope that an end to busing would trigger an increase of parental involvement in the schools. The court had concluded that parental involvement was "essential to the health and well-being" of a school system.[152] The evidence, the court asserted, "was absolutely clear"[153] on this point.

But while both sides agreed that parental involvement was a positive thing, the evidence was not absolutely clear. For example, some of the evidence cited by the school board from education researcher Ronald Edmonds concluded that inner-city schools can be successful with low PTA membership.[154] Even when putting that issue aside, and assuming that parental involvement is inherently positive, the court's conclusions about the decline in parental involvement during busing were spurious nonetheless.

The court noted that PTA membership had declined from about 15,000 to 3,500 "as a result of cross-town busing."[155] The only basis for this conclusion was testimony from a handful of parents and then-Superintendent Albert Ayars. At the trial, parents said it was harder to get involved in their child's school because of the distance between home and school. Ayars said that based on his experience, he believed more parents would get involved if busing were to end.

Other knowledgeable people had differing opinions, however.

According to Dr. Lucy Wilson, one of two black school board members in 1981 and school board chairwoman:

> Parental involvement was a smoke screen. Sure, there were parents who did not attend schools because of the distance, but they were probably few.[156]

Former school board member Dr. John Foster, who is also black, emphasized the importance of parental involvement, and his opinion was quoted in the court decision as justification to end busing. But Dr. Foster was actually opposed to ending busing. "Busing was a secondary issue for me," Foster said in a recent interview. "I'm

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[152]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 824.

[153]Ibid.

[154]Stephen Engleberg, "Reaction to school expert mixed," *Virginian Pilot and Ledger Star*, 17 Jan. 1982.

[155]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 825.

[156]Wilson interview.

concerned about parents getting involved, but I don't think busing had much effect on it."[157]

Nevertheless, the court readily determined that cross-town busing had actually caused a decline in parental involvement. The court then determined that the plan to end busing would increase parental involvement, since, the court claimed, other attempts had failed.[158]

But research shows that increased prental involvement does not require an end to busing. Two consistently-successful methods, in fact, could be implemented easily by a district that has busing. The first strategy, identified by researchers at Johns Hopkins University, centered around reading packets that students worked on at home with their parents.[159] Second, schools that distributed parent newsletters also saw an increase in parent involvement, the Johns Hopkins researchers found.[160]

There was even evidence within the Norfolk school system of a successful strategy that increased parental involvement during the busing years. Bowling Park Elementary School principal Herman D. Clark was successful at involving parents through telephoning and visiting them at home to convince them that they are crucial to their children's education.[161] Frank Hassell, who counsels, advises, and visits with children and parents who live in the public housing projects and attend the target schools, also believes that parental involvement has less to do with distance to the school and is more likely caused by low-income black parents feeling intimidated at schools.

> School can be a very cold and intimidating place for poor parents The parents assume that they are looked down upon, and they don't feel welcome. They don't think that they have anything to offer to their children's education. The distance of the school does not matter much when the parents feel this way.[162]

As it turns out, parental involvement, as measured by PTA membership,

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[157]Interview with Dr. John Foster, 18 March 1993.

[158]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 825.

[159]The Center for Research on Effective Schooling for Disadvantaged Students, *Five Practices Encourage Parent Involvement in Urban Schools*, (Baltimore, MD: The Johns Hopkins University, October 1991).

[160]Ibid.

[161]Amy Goldstein, "Living near school is not important, educator believes," *The Ledger Star*, 13 April 1982.

[162]Interview with Frank Hassell, a private consultant for the Norfolk Redevelopment and Housing Authority, 20 March 1993.

declined between 1986 and 1992 in most of the predominantly black target schools. While general volunteer hours did increase, this is not an indication of parental involvement. Volunteer hours include non-parent community volunteers, and do not simply measure the number of parents involved in the school, but the overall hours contributed. In other words, it would be possible for one or two people – even non-parents – to be contributing large amounts of time, making the number of hours rise, while the rest of the parents remain isolated and uninvolved.

Although PTA membership did increase in most of the non-target schools, PTA membership decreased in six of the ten target schools. Specifically, Bowling Park lost 138 members; Jacox lost 166; Monroe lost 72; Roberts Park lost 75; St. Helena lost 110; and Tidewater lost 237. The chart below lists the PTA membership during and six years after busing ended in the schools where at least 90 percent of the students are black.

PTA Membership for 1984-85 & 1991-92 in Schools with More than 90 percent Minority Students.[163]

1984-85	1991-92
1,934	1,374

Thomas Johnson, the anti-busing proponent, claims that these numbers are misleading because parents of children from the housing projects were not members of the PTA before, and now those parents are simply concentrated, leading to a drop in PTA membership in the target schools.[164] Certainly, this explanation seems plausible. However, if one accepts the idea that parental involvement is a positive thing, an end to busing clearly had a negative effect on the all-black target schools. The parental involvement that occurred in these schools, and may have benefited them in some way, abruptly declined when busing ended. It seems that much of the problem of low parental involvement attributed by the court to busing was actually a byproduct of poverty. Therefore, when concentrated poverty increases in a school, it seems logical that parental involvement would decrease. Simply putting a school closer to a parent's home clearly will not increase parental involvement. In this case, the diagnosis appears to have been wrong, and the resulting prescription ineffective.

Findings from a national survey on parent involvement might help explain the trend in Norfolk. A 1987 survey of U.S. schools, the School and Staffing Survey of the National Center for Education Statistics, reported that predominantly minority schools

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[163]Norfolk Public Schools, PTA Membership and Volunteer Hours, 1991-1993 and 1984-85.

[164]Johnson interview.

and schools with heavy concentrations of minority teachers had far lower numbers of parents volunteering in the schools. This may well reflect the fact that such schools have far higher concentrations of parents with less education and lower incomes. Among schools with more than three-fourths minority students only 8.7 percent of the schools reported 20 or more parent volunteers. The highest number of volyunteers per school came not in all-white schools, but in schools that were between 5 percent and 50 percent nonwhite. According to the survey, almost a fourth (23.2 percent) of the schools that were between 5 percent and 20 percent minority had 20 or more volunteers and a fifth of the schools where 20 percent to 50 percent of the students were minorities, reported at least this numbers. In an analysis of these trends, Michael Bernard offers an explanation that may very well apply to Norfolk:

> There are a number of possible explanations...Schools with high proportions of minority enrollment generally are located in areas whose residents have relatively low incomes. As a result, parents may be less likely to have either the time or the energy to engage in volunteer activity; there may be fewer intact families and fewer parents overall to participate...[165]

Given these data, one must conclude that the court erred in assuming that busing caused the decline in parental involvement. While busing may have been a factor, there are likely many other reasons for the decline. Thus one of the court's primary justifications for ending busing – that it would have enabled parents to play an active role in their children's education – seems to have been misguided. This is particularly dismaying in light of research that shows that other methods of improving parent involvement might have been more successful.

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[165]Michael Bernard (ed.), Volunteers in Public Schools, Washington: National Academy Press, 1990.

PART FOUR

Housing and Recycled Segregation

The previous sections underscore the problems that arise when courts fail to scrutinize, or even to fully understand, either the justifications for ending desegregation plans or the plans that school systems devise to replace desegregation. The essential argument here is that such problems might be avoided if courts instead applied the "strict scrutiny" standard to cases in which a school district wants to cease its busing order.

The following discussion, illustrating the strong connection between school policy and segregated housing, suggests that even if strict scrutiny is not applied, a more thorough consideration of the connection between segregated housing and school policy demonstrates intentional segregation that is illegal under *Brown*. One of the most striking results of the resegregation of Norfolk's schools is that the resegregation concentrates children who live in public housing in segregated, low-achieving schools. The court took no account of the reality of this situation. In the days of legal segregation, city school and housing officials worked together to craft school assignment policies and build schools to serve segregated housing projects. In effect, a return to these school assignments is a return to the very assignments made possible and sustained by legal, intentional segregation and "state action." It seems reasonable to hold government officials responsible for the continuing effects of segregated housing, since today these neighborhoods and housing projects are still mostly one-race. Forty percent of the students attending target schools live in these housing projects, illustrating that the vestiges of the original state action remain.[166]

The evidence from Norfolk suggests that even since the official, overt acts of segregating the races stopped, the city continued to take actions that perpetuate segregation. The city also failed to pursue policies that would have lessened the degree of racial isolation present in the city.

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[166]Denise K. Schnitzer, Acting Grants Writer at Norfolk Public Schools, provided information based on 30 September 1992 enrollment data indicating that 95.1 percent of the students attending Tidewater; 82.8 percent attending Roberts Park, 75.5 percent attending Young Park, 60 percent attending Bowling Park, and 61.8 percent attending Campostella live in public housing. In contrast, only .2 percent of the students attending Lindenwood, 1.4 percent attending St. Helena, 1.9 percent attending Monroe, 12.5 percent attending Jacox and 35.1 percent attending Chesterfield live in public housing. Based on 30 September 1992 enrollment data, about 40 percent of the children attending target schools live in public housing.

Background of Norfolk Housing Policy

As the city of Norfolk began clearing slums in the 1950s, it also created racially-segregated housing projects, concentrated in the southern section of the city, for the 9,416 black households that had been displaced.[167] Many of these projects were, by law, built as purposely racially-segregated projects.[168] The school system is connected to this housing policy, because school officials participated in discussions about where housing projects and the schools to serve them would be located.[169] The school officials, in turn, knowingly built their schools to service those officially segregated housing projects.

About 40 percent of children attending target schools live in this public housing. In other words, for these children, their housing location, and therefore their elementary school assignment, were determined by public action.[170] The school board is in effect responsible for the fact that, under the proposed plan, the racially identifiable schools are located in close proximity to those projects.[171]

The chart below indicates the year that the school board opened segregated schools that are now designated as target schools and the year that the city opened corresponding, segregated public housing projects. In some cases, the schools and housing projects even share names and the dates of school and project openings occur within at least ten years of each other.

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[167]Plaintiff Post Trial Memorandum, Riddick v. School Board of the City of Norfolk, Civil Action No. 83-326-N, p. 84. During the 1950s, the city displaced 29 percent of black households, during the 1960s, the city displaced more than 8 percent of black households and, during the 1970s, the city displaced nearly nine percent of black households, all by some form of clearance or public action. Plaintiff Post Trial Memorandum, Riddick v. School Board of the City of Norfolk, Civil Action No. 83-326-N, at 85.

[168]See e.g., Report (Norfolk Redevelopment and Housing Authority), May 1957, pp. 6, 7; Frank Sullivan, "Benefits seen for all of city by chairman," *Norfolk Virginian Pilot*, 4 Oct. 1949, pp. 1, 22.

[169]Riddick v. School Board of the City of Norfolk, Trial Testimony of Yale Rabin, pp. 1547, 1557; Riddick v. School Board of The City of Norfolk, Plaintiff Post Trial Memorandum, Civil Action No. 83-326-N, pp. 88, 89.

[170]Riddick v. School Board of the City of Norfolk, Plaintiff Post Trial Memorandum, Civil Action No. 83-326-N, p. 86.

[171]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 826.

Years of Opening of Segregated Schools and Corresponding Housing Project[172]

SCHOOL	YEAR OPENED	PROJECT	YEAR OPENED
Bowling Park	1953	Bowling Park	1952
Chesterfield	1920	Grandy Park	1953
Diggs Park*	1953	Diggs Park	1952
Jacox	1949	Roberts Park	1942
		Roberts East	1942
		Moton Park	1962
Monroe	1903	———	
Roberts Park	1964	Roberts Park	1942
St. Helena	1966	Bell Diamond Manor	1973
Tidewater Park	1964	Tidewater Park	1955
Tucker*	1942	Oakleaf Park	1942
		Diggs Park	1952

*The school district consolidated Diggs Park and Tucker in 1990 to create Campostella School.

[172]Riddick v. School Board of the City of Norfolk, Plaintiff's Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, Oct. 1985, 85-1962, p. 14.

The following chart indicates the number and percentage of children living in public housing and attending target schools.

Number and Percentage of Target School Children Who Live in Public Housing[173]

School	Enrollment	# in Public Housing	% in Public Housing
Bowling Park	393	239	60.8
Campostella	568	351	61.8
Chesterfield	379	133	35.1
Jacox	634	79	12.5
Lindenwood	528	10	0.2
Monroe	533	10	1.9
Roberts Park	290	240	82.8
St. Helena	285	4	1.4
Tidewater Park	266	253	95.1
Young Park	347	262	75.5

These data show that the current population of at least five of the target schools – Bowling Park, Roberts Park, Tidewater Park, Young Park and Compostella – depends mostly, and in some cases almost entirely, upon the population of nearby public housing projects. Despite this connection, the court in *Riddick* ruled that it "defied logic" to suggest that the school board is responsible for the fact that "racially identifiable schools are located in close proximity to those projects."[174]

Some city officials stress that Norfolk was for years prohibited by Virginia's annexation laws from building on vacant land, thereby preventing the Housing

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[173]Riddick v. School Board of the City of Norfolk, Plaintiffs Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit, Oct. 1985, 85-1962, p. 14.

[174]Riddick v. School Board of the City of Norfolk, 627 F.Supp. 814, 826.

Authority from building low-income housing in outlying sections of the city.[175] But even assuming that there was little space available, the city could have taken steps to build or transform other housing to create more integrated neighborhoods. For example, as part of a 1979 court settlement with tenants of the Robinhood Apartments and civil rights lawyers, the city made a more serious effort to identify places in integrated neighborhoods in which to build low-income housing. The city did manage to find enough space to build 300 homes, according to one source.[176] This suggests that if city officials had tried harder in earlier years to locate space before the city was fully developed, they likely would have been successful. Second, while the city had been searching for vast areas of vacant land on which to build large, concentrated projects, it could instead have looked for smaller pieces of land. This was a point argued by John Goss, lawyer for the plaintiffs in *Riddick*.[177] This way, the housing could have been spread through different areas of the city. The city also could have, and could still, recycle existing structures and make them into low-income housing, Goss said.[178]

Lastly, the city could have used Section 8 subsidy certificates that would have provided federal subsidies for rents in privately owned apartments in upper and middle income areas.

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[175]Interview with Mary Lou Bingham, Manager of Comprehensive Planning at Norfolk City Planning Commission, in Norfolk, Virginia, 18 March 1993. Virginia's annexation laws required that in order for a city to grow, the city had to apply to a three judge panel. In the 1950s, the judges rarely allowed Norfolk to annex the surrounding vacant land but instead allowed growth only in the urban area. In the 1960s the undeveloped areas surrounding Norfolk began merging, creating the existing Virginia Beach and Chesapeake. As a consequence of Norfolk's inability to annex vacant land and the subsequent creation of neighboring cities, Norfolk became landlocked.

[176]Interview with Attorney John Goss, 19 March 1993.

[177]Ibid.

[178]Ibid.

PART SIX

Conclusion

The assumptions and predictions of the court in *Riddick*, which sanctioned the end of mandated school desegregation in Norfolk, Virginia's, elementary schools, have proved largely inaccurate. Today, Norfolk's black students are intensely segregated and there has been no substantial return of white students to the district. While the court assumed that busing caused white flight, an abundance of evidence suggests that both black and white residents likely left the city for reasons other than just the desegregation plan. The court assumed that the school system would have resegregated had busing continued. But actually, the population had begun to stabilize five years prior to the end of busing. This is not to suggest that busing had no relation to white flight. The two were most likely related, especially in the busing policy's earliest years.

The evidence shows that the prediction that continuing busing would have led to resegregation was unfounded. Projections about white flight and white return upon which the court relied, have proved seriously inaccurate. The actual segregation between black and white that exists today, caused by a return to segregated neighborhood schools, is much more severe than what could have possibly occurred if busing and the stable population trends of the final years of busing had continued. The city would have much more racial integration in its schools than what currently exists.

Equally troubling is that the school board's programs to improve the segregated schools and retain voluntary desegregation options, has also been a disappointment. While the court assumed that about 40 percent of eligible black students would use the majority-to-minority transfer program after five years, only 16 percent of the eligible black students used the program in 1990 and only about 10 percent used it in the 1992-93 school year. Although the court asserted that busing caused a decline in parental involvement, the lack of increase in PTA membership in the target schools indicates that reasons beside busing affect parental involvement. It shows that the policy of putting schools closer to its students' neighborhoods is not in itself a cure for low parental participation in schools.

Finally, while the court justified its decision to allow resegregation by suggesting that the school board was implementing programs to improve target school student achievement, the programs did not improve achievement for black students. Test scores for black target school students remain extremely low, the achievement gap between target and non-target schools is wide and, based on some measures, is growing wider. Recent research reveals that academic achievement is declining among black students, 41 percent of whom are now in schools that are more than 75 percent black.

Perhaps if the school board had the burden of proving a "compelling"

government interest in implementing the proposed plan, the court would have made a more accurate evaluation of the situation and ultimately a better decision. While the court concluded that school board actions had no logical relation to housing segregation, in actuality the school board originally created many of the target schools as segregated schools to serve segregated housing projects -- projects which today are still segregated. The action of reinstituting school assignments that were devised originally for the purpose of segregation should surely be more suspect.

The findings in this paper suggest that civil rights litigators could well challenge the appropriateness of the "rational relation" standard in school "resegregation" cases. And school officials, policymakers and courts who believe that a return to segregated neighborhood schools might improve their school system should use the clear lessons from Norfolk which teach us just the opposite. The findings in this report should encourage educators and policymakers to consider policies that seek to improve education within an integrated setting. The lessons from Norfolk suggest that dismantling desegregation carries false promises. Undoing integration will not bring white people back to urban areas, it will not increase parental involvement among the poor, and it will not provide an equal educational opportunity.

In the future, when a school district attempts to use its "unitary status" to implement a plan that the school district knows will lead to "resegregation," courts should classify the school's action either as intentional segregation, which is illegal under *Brown*, or as requiring strict judicial scrutiny. Though courts generally do not apply such scrutiny in cases that have a disparate impact in school desegregation cases, courts should apply strict scrutiny when a district puts a plan in place with full knowledge that it will disparately affect minority students.

In Norfolk, the only clear results of the city's abandonment of school desegregation and its subsequent return to neighborhood schools has been severe racial isolation and an increase in concentrated poverty, both of which have consistently been associated with poor school performance and inequality.[179] Meanwhile, 40 years after *Brown v. Board of Education* declared intentionally separate schools "inherently unequal," the students relegated to Norfolk's nearly all-black school have lost their right to an integrated education.

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[179]See, for example, Final Report of the National Assessment of the Chapter 1 Program, *Reinventing Chapter 1: The Current Chapter 1 Program and New Directions*, December 1993. This report found that disadvantaged children in schools with high rates of poverty performed much more poorly in school when compared with disadvantaged children in schools with less poverty. The report concludes that the achievement gap between disadvantaged and other students means that schools with concentrated poverty will have much greater difficulty in meeting the National Education Goals set by the National Education Goals Panel.